C-O-N-F-I-D-E-N-T-I-A-L

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION NO. 96CV-5903

WILLIAM BARNES, et al., Plaintiffs, v. THE AMERICAN TOBACCO COMPANY, INC., et al., Defendants.	Deposition of WALTER F. GANNON

TRANSCRIPT of testimony as taken by and before Michaela Herman Davis, RPR, commissioned as Michaela H. Herman, notary public in and for the Commonwealth of Virginia at large, commencing at 10:06 a.m., Friday, August 8, 1997, at the law offices of Hunton & Williams, 951 East Byrd Street, East Tower, Richmond, Virginia.

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Appearances:

LEVIN, FISHBEIN, SEDRAN & BERMAN
Suite 600
320 Walnuut Street
Philadelphia, Pennsylvania 19106
By: JONATHAN SHUB, ESQ.,
attorney, of counsel for the plaintiffs

HUNTON & WILLIAMS
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
By: BRIAN V. OTERO, ESQ., and
DOUGLAS W. DAVIS, ESQ., and
LONNIE D. NUNLEY, III, ESQ.,
attorneys, of counsel for the deponent
and defendant Philip Morris

DECHERT PRICE & RHOADS
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, Pennsylvania 19103-2793
By: ANDREW R. C. GADDES, ESQ.,
attorney, of counsel for the defendant
Philip Morris

Also present:

James C. Attaway, II, videographer
Videoworks
3135 West Cary Street
Richmond, Virginia 23235

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I N D E X

Deponent:	Direct	Cross	Redirect	Recross
Walter F. Gannon	4	-	-	-

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WALTER F. GANNON

was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. SHUB:

Q Good morning, Mr. Gannon. My name is Jonathan Shub. I represent the plaintiffs in this action, Barnes, et al. versus American -- or United States Tobacco, et al. I'm going to ask you a few questions this morning about some of the work that you did at Philip Morris while you were there. I'm going to assume that you understand my questions unless you tell me otherwise. So if you don't understand something that I'm asking you or you can't hear or it's not clear, please ask me to repeat the question. Is that clear?

A Yes, it is.

Q If you need a break at any time, please let myself or your counsel know, and we certainly would accommodate you. Is that clear?

A That's clear.

Q You're aware Dr. -- is it Dr. Gannon?

A Officially, yes.

Q Only your mother called you Dr. Gannon, though; right?

You're aware, of course, sir, that you're under oath right now?

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A I am.

Q Having the same force and effect as if you were sitting in a courtroom; you're aware of that?

A That's clear.

Q I want to first cover a few background matters about you, so let's start with where you went to college.

A I attended Harvard College, Cambridge, Massachusetts.

Q Is that an undergrad?

A Yes, it is.

Q And you received a degree from Harvard?

A Bachelor of Arts.

Q Did you have a major?

A Chemistry.

Q Did you have any other majors?

A No.

Q

REDACTED

A

Q

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REDACTED

Q

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Q Then you came to Philip Morris?

A That's correct.

Q And you were with Philip Morris from 1971 until --

A 1985.

Q How did you hear about the position at Philip Morris in 1971?

A I was recruited by a -- an executive recruiter.

Q What position were you recruited to fill?

A My first assignment was called associate principal scientist.

Q In the research and development department at Philip Morris?

A Correct.

Q You, I assume, came down to Richmond for interviews; is that correct?

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A That's right.

Q Did you interview in New York at all?

A No.

Q Who did you talk to when you came to PM in '71?

A My prime contact was Frank Resnik.

Q What was Mr. Resnik's title at that time, do you remember?

A Something to do with head of laboratory administration for R&D. I don't remember the exact title.

Q And when you say he was your main contact, he was your main contact during the interviewing stage or --

A Yes. He was the one who had commissioned the headhunter to find somebody.

Q Do you have an understanding as to why Mr. Resnik was looking for someone of your background?

A My assumption based on what I knew at the time was that he was looking for someone to take over as a manager in one of the areas.

Q Did you interview with anybody else prior to accepting the position?

A Anybody else at Philip Morris?

Q Right.

A I was interviewed by and vice versa by a number of people.

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Q Was Dr. Wakeham one of them?

A I don't believe so.

Q Was Dr. Seligman one of them?

A No. He was in New York at the time.

Q Do you recall who you interviewed with?

A I interviewed with most of the managers in development. I remember Henry Merit, Frank Daler and Leo Meyer. Probably several others, but --

Q Were you filling someone's position?

A Ultimately, yes.

Q Who was your immediate predecessor?

A Henry Merit.

Q Was Mr. Merit moved -- strike that.

Where did Mr. Merit go upon your filling the position?

A He went over onto the technical ladder as an associate principal engineer.

Q So when you came in 1971, what was your first position?

A As I have stated it was associate principal scientist.

Q Was that considered a manager?

A No. That was on the technical ladder.

Q Were you aware of Philip Morris prior to coming

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to the company in '71?

A Superficially only.

Q Were you a smoker in 1971?

A I think I was.

Q Would you consider yourself to have been a regular smoker?

A I was a regular, comma, intermittent smoker. I would stop smoking for periods of time and then go back to it. At that time I probably was.

Q Was there a time that you ceased smoking entirely?

A Yes.

Q When was that?

A 1985.

Q Were you an intermittent smoker throughout your tenure at Philip Morris?

A Yep.

Q What was the reason why you stopped smoking in 1985?

A Well, I think I have a genetically transmitted predisposition to upper respiratory problems, and I just generally feel better when I'm not smoking. I'm not congested or coughing. I'm what I refer to as geriatric athlete, so I wanted my lungs clearer so I could take part

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in things I wanted to do.

Q Did you feel that way in terms of your attitude about feeling better about not smoking while you were smoking?

A Sometimes.

Q In 1971 when you came to Philip Morris, were you aware of a controversy regarding the health effects of smoking?

A Well, I have to say I guess I was because -- that I was because, you know, it had been in newspapers and things forever.

Q Did you believe when you came to Philip Morris in 1971 based on things that you had read that smoking was harmful to one's health?

A Are you asking me did I believe that smoking was harmful to one's health?

Q Right. Prior to coming to Philip Morris.

A I had read articles which implied that it might be.

Q Was that subject, and that subject being the smoking and health controversy, brought up at all during your interviews at Philip Morris?

A I don't recall.

Q How long did you serve as associate principal

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scientist?

A I can't be too specific. It was a matter of months.

Q And then you assumed another position?

A Yes.

Q What was that position?

A Manager of -- I believe it was process engineering which was a division within Philip Morris R&D.

Q What years did you have that position of manager of process engineering?

A It was probably in 1972 to 1973. I'm a little vague on the actual dates.

Q What was your -- albeit a short tenure, what was your responsibilities as associate principal scientist?

A Well, basically it was an interim position which would allow me time to learn something about the goings-on at research and development and at the various manufacturing plants in Richmond.

Q When you say the goings-on, I just want to explore that for a moment. What were you introduced to when you -- well, let me rephrase it.

How was your orientation conducted at Philip Morris to get you involved in the company? What types of projects or activities were you introduced to?

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A All the projects that were ongoing at R&D.

Q And how were you made aware -- how were you made aware of all the projects at R&D?

A Well, I spent time with each manager and some of the more senior scientists and engineers.

Q As a general matter, what were these projects? Can you group them in any way, types of projects that were going on at R&D at that time?

A Well, we're going back to 1971, but there were two major divisions at the time. Research and development. And I talked to each manager and, as I said, some of the principal scientists and engineers. I can't be specific about exactly what was going on at the time. It was studies of smoke chemistry. There were activities involving reconstituted tobacco. At that time Philip Morris owned the American Safety Razor Company, and there was a project going on studying the metallurgical properties of various razor blades and things like that.

Q Did you have an occasion in 1971 to meet a William Dunn?

A Yes.

Q Did you spend any time with Dr. Dunn learning what his -- well, strike that.

Do you know what Dr. Dunn was doing in 1971 at

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the company, what his position was?

A He was on the technical ladder, but he was running a project. My first exposure to Dr. Dunn, he was one of the interviewers, performed an I.Q. test and psychological evaluation. That was my first exposure to Dr. Dunn.

Q What was your next exposure in terms of what -- after the interview, I.Q. test he performed on you, what was your first exposure to Dr. Dunn professionally in terms of what he was doing for Philip Morris?

A I don't really recall. I'm not sure whether or not he was one of the people I talked to in my orientation or not. I don't really remember going into any details about what his project was involved in.

Q What kind of projects were being done with respect to what you called recon tobacco or reconstituted tobacco?

A At the time there was a pilot plant within the development group that was set up to make what is called BL. Shortly after that they moved on to the pilot work of -- and again I can't be specific about dates -- onto piloting the work for what eventually became the RL process.

Q Who headed up the effort at the pilot plant with respect to the RL process?

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A Well, at that time Henry Merit.

Q In 1971 when you came to Philip Morris, was Philip Morris making reconstituted tobacco?

A Yes.

Q When you say pilot plan, what do you mean by pilot plan?

A Miniaturized version of the production facility.

Q And at the time that you were there, they had already been manufacturing or making RL; correct?

A No.

Q They had not been?

A No.

Q When did they first begin -- strike that.

When was the pilot plant first im- -- first used? When did they first use the pilot plan?

A I have no idea.

Q Before you came?

A Oh, yeah.

Q But they weren't making it commercially at the time?

MR. OTERO: I'm going to object to the form of the question. It's a little bit vague.

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BY MR. SHUB:

Q I thought you had said to me a few seconds ago that at the time that you were there, they were not making RL?

A That's correct.

Q When did they start making RL? They being PM.

A Yeah. Best I can remember be in the mid 70s.

Q So they were in the development stage when you first came?

A No, sir. As I explained to you, when I got there the pilot plant was making BL.

Q But not yet making RL?

A That's correct.

Q When you succeeded Henry Merit, which you did; is that correct, at one point?

A That's correct.

Q Did you also assume any responsibilities that he had had with respect to the RL plant?

A There was no RL plant at that time.

Q The pilot plant.

A There was no RL pilot plant at that time.

Q When did the RL pilot plant come into being?

A Let me amend that. It was -- by the time I got there, they had commenced to convert the BL pilot plant to

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RL pilot plant. I think. In terms of chronology I'm a little vague, but it was during that 1972-73 period that they began to use, I believe, the pilot plant to make RL.

Q Did you have any involvement in the conversion of the BL plant to an RL -- I'm sorry. Did you have any involvement in the process of making RL?

A How do you define involvement?

Q I define involvement in the most broad terms. That means, did you have any interaction professionally in the manufacturing of RL?

A Again struggling because of the diversity of positions I held at Philip Morris. But I did. The answer to the question is yes, but I can't tell you exactly at which point in my career at Philip Morris that that took over. I was at one time responsible for the project of the pilot plant and the transfer of that technology into the manufacturing sector.

MR. SHUB: Can you repeat that answer. I'm sorry.

(The record was read.)

BY MR. SHUB:

Q I'm just not clear what you mean by responsible

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for the project of the pilot plant.

A I'm not sure those are my exact words.

Q Okay. Let's try it again.

A Let's rephrase it a little bit. There was a project within my division which operated on the pilot plant RL unit, and ultimately was responsible for effecting the technology transfer to the manufacturing.

Q What types of projects were or research was being done with respect to smoke chemistry at the time that you came to Philip Morris in '71?

A Well, of course, at that time I was assigned to the development group, so my knowledge or familiarity with that type of work was, you know, peripheral at best. There were ongoing projects as I remember involved in determining the constituency of smoke.

Q And can you define what you mean by constituency of smoke?

A What are the various components in smoke.

Q Do you recall who was working on those projects?

A Let's see. There was a gentleman named Dr. Bill Johnson who was a project leader in the research group. There was a fellow named Bob Jenkins who was in charge of the radio chemical assays of smoke chemistry. They were the

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two prime projects as I remember it working on smoke chemistry.

Q Do you recall any work or research being done on the question as to why people smoke?

A Yes.

Q Was that something you recall being done when you came to Philip Morris in '71?

A I believe it was.

Q Do you know who was working on that question?

A Dr. Bill Dunn.

Q Do you know whether there were others that were working on that with him?

A Well, he had a group under him.

Q A group. Was he a manager?

A I'm not sure. I'm not sure whether he had -- at R&D in the 70s they had what they call the dual ladder system. There was a technical ladder and a managerial ladder. And there was a controversy over whether project leaders were on one or the other. And I'm not sure exactly where it built on frankly.

Q Do you know -- strike that.

Why was Philip Morris studying the various components of smoke?

A Well, you know, my answer is strictly going to

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be opinion going back 25 years ago.

Q Sure.

A We had at the time a rather sophisticated group of scientists and engineers and a product that was comprised of a natural substance. And it was the intent of R&D management to learn as much about all aspects of our product as we could.

Q With the ultimate objective of? If there was one. In other words, would you say -- was it fair to say that you were -- the ultimate objective was to sell more cigarettes?

MR. OTERO: Objection to the form of the question.

You can answer.

A I'm going to speculate again in terms of I'm not sure what New York management with regard to Richmond R&D management had in mind. I can't read their minds. But again knowledge about your product is very important so you can produce a better product and ultimately, I guess you'd have to say, to be successful in the marketplace.

BY MR. SHUB:

Q When you use the term a better product, in this context cigarettes, what do you mean by a better product?

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What in your mind -- what did it mean when you were at Philip Morris? Not sitting here today what you think it means of producing a better product in the cigarette industry. When you were at Philip Morris, what was your opinion at that time as to what a better product would mean?

A My definition would be a product which would be more favorably received by the consumer per se and in comparison with competitive products.

Q Was it your opinion while you were at Philip Morris that a better product would -- strike that.

Let me rephrase it. In producing a better product at Philip Morris, did the question ever arise as to whether Philip Morris would attempt to produce a product that was as least hazardous to a consumer's health as possible?

A I'm not sure at that time that that was a part of the regimen of product development. As I remember it, and again speaking in 1971, '72, I was not in product development or associated with it. But from what I heard, the goal of product development was to produce products which met certain tar specs, specifications and were subjectively acceptable to the consumer.

Q So it's fair to say at least in 1971 that health aspects of the product were not a component of

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producing a better product?

MR. OTERO: Objection to form.

You can answer.

BY MR. SHUB:

Q I just want to confirm that what you mean is that you were looking to get the best consumer acceptance of the product; that's what it meant at Philip Morris to get a better product than a competitor?

A I would have to say that is my opinion.

Q Sure.

A My opinion only.

Q Was there a time where health issues regarding cigarettes came to the forefront or became an issue at Philip Morris?

A Well, gradually as the years went by, more and more reports came out, essentially indicting certain components of smoke. And some efforts were made to determine whether some of these components were in there and whether or not they could be removed and how.

Q When you say certain reports came out, I think in your answer I'm understanding that to be reports outside of Philip Morris; is that correct?

A Yes. Outside literature.

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Q What about reports inside of Philip Morris indicting certain components of smoke. Were you aware of any such reports?

A No.

Q Did -- is that because Philip -- is that because the studies reveal there were no components of smoke that -- strike that.

Is that because Philip Morris was not engaged in the research into negative or harmful components of smoke?

A I think as I stated earlier, we were interested in as much knowledge about the product as we could obtain. I think any reaction along the lines that I think you're implying about hazardous materials came from outside.

Q And what I'm trying to understand is what is your understanding as to whether or not Philip Morris was conducting similar research that would indict certain components of smoke?

MR. OTERO: I'm going to object to the form of the question.

You can answer it.

A Now I'm going to have to ask you to repeat the question, please.

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BY MR. SHUB:

Q Okay. Maybe I'm being more confusing than necessary because it's not a very complicated question I'm trying to get to. My understanding is that you had testified a few minutes ago as years went by while you were at Philip Morris, certain reports came out that indicted certain components of smoke. Is that fair?

A Yep.

Q Maybe it would help if we investigated what you meant by indicting certain components of smoke and the reports you're referring to. As a general matter, what do you have in your mind when you say that certain reports came out indicting certain components of smoke?

A Well, the first thing that comes to mind are the oxides of nitrogen which people said could in certain instances be harmful to humans.

Q And when you say harmful, do you mean carcinogenic? What do you mean by harmful?

A I don't think there's ever been any implication that the oxides of nitrogen were carcinogenic, but they could perhaps be implicated in upper respiratory or lung problems. Bearing in mind that one of them is used commonly in the dentist office as laughing gas.

Q That was one area. Oxides of nitrogen. What

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other studies did you have in mind when you said indicted certain components of smoke? What component would be indicted? It would be the oxides?

A One of them.

MR. OTERO: Objection. Compound question.

MR. SHUB: It is. Sorry about that.

BY MR. SHUB:

Q Let's go back to my other question. What other studies or reports did you have in mind?

A I didn't have anything in particular in mind when you mentioned it. I mean, if I stopped to ponder it for a while, I could probably think of some others that were mentioned, cited.

Q Well, it's an important question for our deposition, so I would ask that maybe we give you a few seconds to think about it because I'd like to know what other reports that you can think of. I know it's been a long time since this happened, and it's been a long time since you've been with the company, but maybe if we gave you a few seconds, you might be able to come up with other reports that you have in mind other than the oxides of nitrogen.

A I can think of two other instances offhand.

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One is carbon monoxide.

Q And what do you recall were the reports that indicted carbon monoxide?

A I have no idea.

Q What was the harmful effect that you're referring to?

A Well, I think it's generally acknowledged and accepted that if you inhale large quantities of carbon monoxide, it can be quite toxic.

Q Is there another -- you mentioned there were two. Is there a third?

A The only other thing I can think of is benzoate pyrene was cited.

Q And is that a carcinogen?

A I believe it's been reported as such.

Q Do you recall any internal studies at Philip Morris with respect to benzoate pyrene?

A I believe that at one point they were looking for it in smoke.

Q They being PM?

A Excuse me?

Q They being Philip Morris?

A Yeah. R&D.

Q Do you have a time frame when that would be?

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A 70s.

Q Was that -- is it fair to call it a study at Philip Morris?

A I don't think it's fair to say that it was a study in and of itself. In doing the smoke chemistry, I believe some of the effort was devoted to seeing if that was in there and in what quantities. Again bearing in mind that this was not my area at the time.

Q Sure. I understand. Did it ever become your area?

A Yes. But by the time it did, benzoate pyrene was not an issue.

Q Well established?

A What does that mean?

Q When you say it's not an issue, what do you mean it's not an issue?

A You didn't hear what I said. It was not an issue that was being concentrated on by the time I was involved in that group.

Q Was the look into benzoate pyrene in Philip Morris in response to outside literature that indicted it in smoke as a negative component of smoke?

A I think that's a reasonable assumption.

Q Would that be -- strike that.

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Did Philip Morris look at the issue of carbon monoxide in smoke?

A I believe the analysis was performed.

Q Was that also in response to outside literature indicting it?

A Probably.

Q Oxides in nitrogen. Was that studied at Philip Morris?

A I believe so.

Q Was that in response to studies indicting it from the outside?

A Probably.

Q Did Philip Morris as far as you know ever initiate research into potential harmful components of smoke before there was outside research indicting it?

A Well, as I said, there were ongoing projects analyzing the components of smoke. I think that sort of encompasses what you're asking.

Q But I'm just wondering whether it was an active or reactive research process with respect to certain negative -- with respect to certain reports that indicted components of smoke? I don't know if I'm being clear as to what I'm saying.

MR. OTERO: I'll object. I think you're not

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being clear.

But you can answer it if you understand.

A Well, I think we're going over and over this. I've said several times that there were projects going on to study on an ongoing basis initiated by Philip Morris to find out what was in the smoke.

BY MR. SHUB:

Q And did any of those projects conclude that there were harmful components of smoke?

A That type of testing was not done. It was an analytical process to determine what was in there.

Q And not its effect upon human health; is that fair?

A Correct. That's correct. That kind of work was not done. It was done as an analytical project to determine what was in there.

Q Was work on or projects regarding human health effects of smoke ever performed while you were at Philip Morris?

A Not that I know of.

Q Did you have an opinion while you were at Philip Morris as to why such work was not performed there?

A Oh, I guess I had an opinion that it was sort

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of the back of my mind. It seemed that even then the tobacco industry was looked at at a distance, shall we say, and that in my mind I questioned whether or not it would be to anybody's advantage to do that kind of research because if we came out with documents and published them that said smoking is not harmful, such-and-such is not harmful, they would be again treated with disdain and probably not believed. So it seemed to be better to spend our research money on things that we could better accomplish. Again personal opinion.

Q Sure. Was that issue about not doing work on the human effects on -- I'm sorry, on the effects of smoke on health, was that issue, and the issue being not performing that kind of work, discussed at all at Philip Morris?

MR. OTERO: Objection to the form.

A Can I have a more precise question, please?

BY MR. SHUB:

Q Sure. Were you ever in a meeting where the issue came up as to whether or not Philip Morris should conduct research regarding the health effects of smoking?

A I don't believe so.

Q Did you personally believe while you were at

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Philip Morris that Philip Morris should perform research or conduct studies on the health effects of smoking?

MR. OTERO: Objection. That's been asked and answered, I think.

But you can answer it again.

A Yeah. I think that's as an adjunct to what I just said my personal opinion was; that it wouldn't have been worthwhile.

BY MR. SHUB:

Q And that's because no one would have believed it --

A That's part of it.

Q -- if they had come out with contrary studies or findings?

Did Philip Morris conduct research to test conclusions of outside reports regarding harmful effects of smoke on humans?

A What harmful effects?

Q Any harmful effects that were reported in outside literature.

A I'm not familiar with any reports of that nature.

Q Well, for example, did Philip Morris ever

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conduct research with respect to nitrosamines?

A I don't know.

Q Is it fair to say that if they did, Dr. Gannon, you would have been aware of them, of such studies?

A I assume so. During the time I was there.

Q Sure.

A Before and after, particularly after --

Q Different story. Speaking of the after, do you have contacts with employees at Philip Morris presently?

A Some.

Q Would you say that you have contacts on a social basis with any current employees?

A A few.

Q And who would they be?

A My wife's bridge club.

Q

A

Q

A

Q

A

Q When was the last time you had lunch with Dr.

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Osdene?

A Six or eight months ago. That's a guess.

Q When was the last time you spoke with Dr. Osdene?

A Couple of weeks ago.

Q Did he know you were coming -- did you tell him you were having this deposition today?

A Uh-huh. Yes.

Q Did he tell you he had the pleasure of being deposed?

A I'm not sure whether he mentioned that. He's been involved in a few of these, and I'm not sure whether that specific thing came up.

Q Were you aware that he was deposed?

A No.

Q Or are you aware?

A I am now.

Q And how did you become aware of his deposition?

A Well, either he told me or you just did. I can't remember whether he told me on the phone or not.

Q Did he talk to you at all about his deposition?

A No. He was very rigorous in saying that he would not mention it and don't ask him any questions. And I didn't.

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Q Are there others at Philip Morris that you have lunch with that are -- let's -- actually I didn't even ask you about former employees like Dr. Osdene, but I appreciate you accepting that as a question as well. Why don't we group them current and former together. Are there others that you have lunch with other than Dr. Osdene?

A Offhand I can't think of anybody.

MR. SHUB: Why don't we take a five-minute break.

(Recess)

BY MR. SHUB:

Q Let's go back if we could to the time that you were manager of process engineering in the '72-'73 time frame. What were your responsibilities as manager of process engineering?

A I was supervising the groups who were working in that area, and part of it was the reconstituted sheet.

Q What we talked about earlier as the RL process?

A That eventually evolved. When I first took over, they were in the construction phase of it. And the conversion of the pilot plant from BL to RL.

Q Why did Philip Morris determine to produce

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reconstituted sheet tobacco?

A Well, again my opinion, speculation, probably due to the fact that it's a good means to recover a lot of the materials that would otherwise turn out to be waste. Tobacco is a natural product and rather costly, and as it goes through the manufacturing process, you begin to break up little pieces and you end up with small pieces and dust. In addition to which some of the stem materials can be incorporated into the sheet. So it's a cost-saving method, measure.

Q Were there other groups or divisions at PM that were also involved in this back in '72-'73 in the RL development phase?

A Not that I know of.

Q Basically came out of your group?

A Uh-huh.

Q Was there one person that you would say was primarily responsible for the -- for the development of the RL process?

A I don't think I could say that.

Q But you would say it would be your group was responsible for the RL process?

A Well, by the time I got involved in it, the process was more or less laid out, and we implemented it.

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Now who was responsible for it, I don't know. It's a takeoff on paper making.

Q Who was in your group at that time that was participating in this RL project?

A I'm not sure I can answer that because again the time sequence. Eventually I left this position and went into the research group and came back into development. The fellow who was primarily -- I can give you the name of the fellow who was primarily responsible for the finalization in the technology transfer to manufacturing, and his name is Grant Gilletly.

Q Okay. So in '72-'73 you were primarily working on this RL project or supervising the group; is that fair?

A That's one of the projects, but it was the main one, yep.

(Mr. Nunley is now present.)

BY MR. SHUB:

Q What were some of the other projects?

A I frankly can't recall. It was a small division.

Q Who were you reporting to directly at that time?

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A Dick Thompson.

Q And who was Thompson reporting to?

A Frank Resnik.

Q After you left that position, '73, what position did you then assume?

A I was a manager in the research division under Tom Osdene.

Q And how long did you hold that position?

A Couple of years, plus or minus.

Q Around '73 to '75?

A Yep.

Q What division were you managing in the R&D?

A It was called chemical and biological research division.

Q What projects were you working on at that time?

A Well, this goes back to the work I described earlier with Bill Johnson and Bob Jenkins doing the smoke chemistry.

Q What was -- well, strike that.

Did any of your -- or did any of the work in that division in that period involve the study of nicotine?

A There was a group that was synthesizing nicotine analogues.

Q And what's a nicotine analogue?

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A Chemical moiety that looks something like nicotine.

Q Who was doing that? Who was in that group?

A Fred DeBartelabin, Stuart Clow. Ultimately Jeff Seeman, Ted Sanders.

Q And were they reporting to you, Seeman and Sanders?

A Yeah.

Q Who -- well, strike that.

Was the study of nicotine analogues going on before you came --

A Yes.

Q -- to that division?

Who did you succeed as the manager of chemical and biological research?

A Bobby Kayda.

Q Do you know when the nicotine analogue studies began?

A No, sir.

Q Why was Philip Morris synthesizing nicotine analogues?

A Well, actually this was Tom Osdene's pet project. He was hoping to -- and again I'm speaking for him, and perhaps it's more my opinion than what was going on

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in his mind. But I think he was looking for compounds which would have slightly different effects than nicotine itself when burned in a cigarette or transferred in a cigarette.

Q How was it your understanding that this was an idea of Osdene's?

A I think it was fairly well known.

Q What was your opinion of the idea of synthesizing nicotine analogues at that time?

A At the risk of bringing down the wrath of my good friend Dr. Osdene, I thought it was a little too blue sky and would never lead to anything. It was good basic research if you wanted to have some organic chemists looking for something to do, but I didn't see that it fit into the context that had any practicality.

Q As far as your understanding, did that opinion turn out to be correct?

A I have to assume so. I could not visualize using any kind of substitute in a commercial cigarette for a number of reasons, not the least of which is cost. And as far as I know, it has never reached fruition.

Q What were the other reasons why you couldn't see using a substitute?

A Probably from the public relations view of adding synthetic chemicals to the smoke which was -- to the

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tobacco which was foreign in that sense.

Q Okay. PR was one, cost was another. Is that correct?

A Yeah.

Q What about cost did you think would prohibit its use?

A Well, nicotine comes along with the tobacco. You pay for the tobacco, you get the nicotine. But if you had to go out and hire a contractor to make large quantities of a synthetic organic chemical and then add it to tobacco, that itself, I think, would have been preclusive.

Q Was the propriety of engaging in this nicotine analogue project ever discussed at Philip Morris? In other words --

A Propriety?

Q Let me rephrase. Was it discussed whether this was a good idea?

A Not in front of Osdene.

Q What about behind his back?

A Not by the guys who did the work. I think the folks in development sort of thought it was a waste of time. Had no ultimate practical use.

Q And when you came to the chem bio research division in '73, was that your opinion; that we might be

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wasting our time here?

A I think I've already stated that. Yes.

Q You never said that to Osdene though?

A Of course not. What's the expression, I may be stupid but not crazy? Or was it the other way around? He was my boss.

Q You might have said, Dr. Osdene maybe we ought to rethink this. But that didn't happen?

A No, I didn't say that.

Q Why -- what was your understanding as to why Dr. Osdene was looking for a substitute? And I know you said that he was hoping to find compounds that had slightly different effects when transferred -- let me rephrase it. You said that he was trying to find compounds that had slightly different effects than nicotine when transferred in a cigarette; is that fair?

A Yes.

Q Okay. What were the reasons why he would be looking to substitute or -- what were the reasons why he would be looking to find the substitute for nicotine?

A Well, I can't speak for Tom Osdene and his thought process. I can speculate that he came from a pharmaceutical background and was just interested in what other similar types of chemicals would do.

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Q Well, sometimes if it ain't broke, don't fix it attitude. Why would he want to be searching for something different? What was it about nicotine that he would be interested in looking for a substitute for?

MR. OTERO: Asked and answered.

You can answer.

THE DEPONENT: Excuse me? What did you say?

MR. OTERO: I object to the question. It's been asked and answered. You can answer it again if you like.

A Again I think I have answered it, and I can't be specific about what was going on in Tom's mind about why he was doing this. I didn't object to the work myself because both he and I were trained as synthetic organic chemists, and they were nice projects from a chemical point of view. And I think part of it may just have been his own interest in basic synthetic organic chemical research.

BY MR. SHUB:

Q Does nicotine have any harmful effect on the central nervous system?

A I don't know. I don't even know what you mean by harmful.

Q Do you know whether Dr. Osdene was looking to

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develop nicotine analogues because he believed that nicotine had a harmful effect on the central nervous system.

MR. OTERO: Mr. Shub, I'm going to object to the question. I mean, you've asked the witness twice to speculate about Mr. Osdene's reasons. He's twice given you his best speculation. And, you know, it's been asked and answered, and it calls for speculation.

You can answer it again.

A That was what I was going to say. It would call for total speculation on my part.

BY MR. SHUB:

Q Was there ever a discussion at Philip Morris that the reason why the company was looking to develop nicotine analogues was because it was trying to avoid -- strike that. -- because it was trying to eliminate the negative effect that nicotine had on the central nervous system?

A Well, in order to answer that question, I think I'd have to say that it wasn't the company that pushed this project as I've already stated. It was Tom Osdene. And I'm not sure if it was determined that there was a harmful effect on the CNS.

Q Were you ever in any meetings where the issue

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of whether nicotine might have a harmful effect on the CNS was discussed?

A I don't believe so.

Q So it's your testimony that you don't have an understanding that one of the reasons why PM was synthesizing nicotine was to attempt to eliminate the harmful effect that nicotine has on the CNS? Is that fair? I just want to close out this little area of inquiry by that final question so I understand.

MR. OTERO: I'll object to the form of the question because it's been presented as a summary of what he testified to. I don't think he has, but --

BY MR. SHUB:

Q Okay. That's a fair objection, but you can answer.

A I'm lost on the question now.

Q Let me start over. Is it fair to say, Dr. Gannon, that you didn't believe while you were at Philip Morris that one of the reasons why Philip Morris was synthesizing nicotine was because it was trying to find a substitute for nicotine because of nicotine's harmful effect on the CNS?

MR. OTERO: Objection to form.

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You can answer.

A I'm going to have to say no because the term harmful effect is lost on me. I'm not sure exactly what that means.

BY MR. SHUB:

Q Let's take out the word harmful and just say effect. And let's -- let me repeat the question. Let the court reporter read the question back. And understand the question now eliminates the word harmful, and let's see if your answer changes.

(The record was read.)

BY MR. SHUB:

Q Let's just say that -- let's just use the -- let's go with the same question, but eliminate the word harmful and just nicotine's effect on the CNS.

MR. OTERO: I'm going to again object to the form.

You can answer if you understand.

A Well, as I already stated, it was not the company, it was Tom Osdene's pet project. Secondly, as I think I stated earlier, he was interested in it from a

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pharmacological point of view because of his background in the pharmaceutical industry and was looking to see whether any of these analogues would have different effects on the peripheral and central nervous system.

BY MR. SHUB:

Q But he was not interested in nicotine analogues because of any health effect of nicotine; is that fair?

MR. OTERO: Objection. Again calls for speculation.

You can answer.

A Shear speculation on my part. So I don't think I ought to answer the question.

BY MR. SHUB:

Q Well I don't want you to speculate, so let me ask you this question then. Were you ever a party to any meetings or discussions where Osdene stated that the company should look at nicotine analogues because he had a concern for the health effect of nicotine on humans?

A To that question the answer is no.

Q You mentioned a Ted Sanders; is that correct?

A Yes, I did.

Q What was Mr. Sanders' position at Philip

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Morris?

MR. OTERO: When?

BY MR. SHUB:

Q During the period 1971 to 73.

A I don't remember when he was hired.

Q Strike that. '73 to '75.

A He was hired somewhere in that period. And he was brought in as the project leader of that synthetic organic chemical group.

Q Otherwise known as nicotine analogues?

A I'm not sure if that was the official title or not.

Q But that's what it was?

A Yeah.

Q The study of nicotine analogues?

A Yes.

Q What other projects were you working on during the '73 to '75 time frame while you were heading up the chem and bio research group?

A Well, again there was Johnson's smoke chemistry, Jenkins radio chemistry, Dan Tang was running a project in microbiology, and there was another group working on bioassays.

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Q What was the objective in the study of the bioassays?

A This was initiated, I believe, shortly after Bruce Ames came out with his biological-type assay for activity. And it was an attempt to see whether or not we could reproduce that test, whether it was a valid test and if modifications and other similar tests using different micro-organisms could be established.

Q Who was working on the bioassays?

A This was a group headed by Bob Pages. There were several project leaders in there. Lou Wisebecker was one of them. He was ultimately replaced by Bob Pages.

Q Were they looking -- is it fair to say that that group was looking for changes in biological activity in smoke?

A Yes.

Q What would be the objective of looking at biological activity in smoke? Why would one spend time and money to do that?

MR. OTERO: Objection to form.

BY MR. SHUB:

Q Strike that. Why did Philip Morris spend time and money to do it?

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A To sort of as a monitor to see whether or not we could reproduce results that were coming in from the outside.

Q Was there any health impact associated -- strike that.

Was health concerns at all an issue in connection with the study of biological activity?

MR. OTERO: Object to the form of the question because I think it's vague.

You can answer it.

A I'm not sure quite how to answer that question. The effects of cigarette smoke on micro-organisms is quite a stretch to talk about health issues. So I think the answer is no.

BY MR. SHUB:

Q Okay. How does the study of bioassays -- strike that.

What did Philip Morris learn about its product by studying bioassays?

A Again it's a research study, and I'm not sure there was any practical conclusions from any of this work.

Q Do you recall any conclusions, whether practical or not, with respect to the bioassay studies?

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A Not really because many of these were developmental efforts to develop -- that's redundant. Developmental efforts to produce or reproduce assays. And during my tenure there, it was mostly developmental work.

Q And were you receiving studies of results while you were managing that division?

A What studies? You mean from outside?

Q Whatever studies that were done. Would you receive those written reports?

A Yes.

Q What types of work was being done with respect to microbiology during that time frame?

A My memory of that is a little vague. I was put in charge of a group as a chemist. I was overseeing work by biologists and microbiologists, and my memory of this is very vague. But similar kinds of things.

Q Again would you say that there was little practical -- well, strike that.

How did the study of microbiology assist Philip Morris in understanding more about its product?

A Not sure quite how to answer that question other than my impression was it -- and again I inherited these groups when I took over; that it was sort of a responsive effort to emulate and reproduce things that were

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being done outside Philip Morris.

Q Now what types of things on a broad matter are you referring to when you say things being done outside of Philip Morris?

A Well, as I've already stated, the prime one was the Ames assay.

Q What is radio chemistry? What's that term mean?

A We're not talking AM and FM. We're talking about the use of isotopes added to tobacco, and then the following of them to see what happened to the various constituents in smoke.

Q How would radio chemistry and the study of that area assist Philip Morris in learning more about its product?

A As I've stated several times already, we wanted to know as much about what was in the smoke as possible and identify as many components as we could and quantify them if possible.

Q Did that project assist in identifying components of smoke?

A I believe so.

Q What components of smoke were identified as a result of the radio chemistry work?

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A It would be impossible for me to answer this because there were so many components in smoke, and I do not retain a list in my mind of that kind of stuff.

Q Sitting here today, is there any -- sitting here today, do you remember any certain component that was identified as a result of the radio chemistry work?

A No, I don't.

Q I believe you testified already regarding the smoke chemistry work. Is there anything -- strike that.

What was done during the period '73 to '75 with respect to smoke chemistry work?

A I think we've been over this. There was ongoing work using various analytical tools, gas chromatography, mass spectrometry, nucleomagnetic resonance studies, attempting to identify and quantitate smoke components.

Q Was this attempt at identifying and quantifying smoke components a project that was going on prior to your coming to the research division in '73?

A Yes.

Q Do you know when that process began of this identification and quantification?

A No. No, I don't.

Q Did it continue after you left in '75?

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A I believe it did.

Q Was that ongoing as long as you were with the company?

A I don't know. I would think so, but I'm not sure. Ultimately I left R&D, and so what went on there isn't necessarily what I can speak to.

Q In 1975 did you assume a different position at PM?

A Yes, I did.

Q What position was that?

A Director of development.

Q Was that a promotion?

A Yes.

Q Was that director of development position within R&D?

A Yes.

Q What did one do as director of development? What did you do as director of development? Better yet.

A I supervised and oversaw the various divisions within the development.

Q Dr. Gannon, do you believe that during your 14-year tenure at Philip Morris you made any significant contributions to Philip Morris's business?

A Certainly.

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Q Good. I was hoping you'd say that. What contributions do you think you made to their business? What did you have in mind when you said certainly?

A Well, I think through -- and I'm not taking credit for these things personally, but --

Q Sure. I don't mean to --

A But the work that came out of our work in development was responsible for the ultimate reduction to practice of the RL plant.

Q I'm sorry. Reduction?

A To practice. It's a patent term. The RL plant. When we put in the CO2 expanded process, it didn't work. And we did the research necessary to determine the problem and got it resolved which allowed us to start up on time. And lastly I guess I would cite the fact that I was involved in the development of the Merit cigarette.

Q Is it fair to say you had an intimate involvement in the development of Merit?

A From an overviewing point of view, yeah.

Q Not that those aren't significant, because they are, but are there any others that you can think of? I don't mean to belittle those.

A I'm keeping it within the context of the time at R&D.

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Q Well, let's -- we're going to cover obviously up to '85 when you left, but I want to open up the question at this point with respect to significant contributions to your entire career. So I want you to think about the time from the time you came in '71 until the time you left which I believe was in '85.

A Well, I think I've given you a couple highlights to work on.

Q But I don't want you to limit your answer to the R&D years. You might want to keep your same answer even if you expanded to the time you left R&D, but I want to ask this question once so we don't have to go back over it again.

A Well, we're going to get out of context here if I skip ahead. If you want to do that, that's fine.

Q That's okay for this question. We'll get out of context, and we'll go back to where we were.

A All right I was responsible -- or the people within my tutelage were responsible for the development of products in Europe. And I guess lastly I consider myself an effective communicator to the extent that when I worked with the tobacco technology group, we transferred technology out of Richmond to various of our affiliates throughout the world.

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Q Okay. Let's get back in context to 1975. Who did you report to when you became director of development?

A Frank Resnik.

Q What does the term development mean in this context at Philip Morris at that time?

A Development of processes and products.

Q Products being cigarettes?

A Yes.

Q What would be your role specifically in developing cigarettes?

A Again supervision, technical input, communication to management.

Q When was Merit first developed?

MR. OTERO: I'm going to object to the question. I think it's vague.

But go ahead and answer.

A I can't be that specific. I took over in '75, so I'm saying it's probably '76, '77. Could be part of '75, but I think it was more '76.

BY MR. SHUB:

Q Was Merit on Philip Morris's radar screen when you came to be director of development in 1975?

A I think not. Well, it may have been in the

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mind of somebody, but it was not an active project when I took over.

Q What was the name of that project before it became Merit? If you know what I mean.

A Well, it was called in the factory Timer.

Q Project Timer?

A Yeah.

Q Take me through, if you would, the process of the development of Merit from the -- let's start with the first stage. What was the first stage in the Merit and -- development of Merit?

A Well, I don't think there was a first stage. It was a multidisciplinary attempt to meet the goals of the project which were to, as I remember it, to develop a cigarette which would deliver less than 10 milligrams of tar and be subjectively equivalent by consumer testing to various competitive products at the 15-milligram level.

Q Who determined that to be the goal of the Merit project?

A I can't be specific about this. Our directors along product development lines came from the marketing department in New York. Whether it came directly from somebody in marketing or whether it was Cliff Goldsmith's idea, I'm not sure. Mr. Goldsmith had a great deal of

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influence at that time in our direction.

Q What was your understanding as to why Philip Morris wanted to develop a cigarette with less than 10 milligrams of tar and one that would be subjectively equivalent to cigarettes at the 15-milligram level?

A Again personal opinion, there was a general hue and cry outside of Philip Morris that lowering the amount of tar and nicotine intake of smokers would be beneficiary. And therefore we wanted to be first on the market with a product which would be equivalent in subjective response to higher tar delivery cigarettes.

Q Why was the 10-milligram level of tar selected?

A I don't know. Maybe it seemed like a nice round number, and if we could get below it, it would be a marketable item. Shear speculation on my part.

Q How does the level of milligrams of tar affect consumer acceptability?

A Well, I think people -- we're talking strictly my opinion here. People who are used to smoking a full-delivery cigarette expect a certain effect in terms of taste. As you begin to go down in delivery through whatever means, the response is reduced. And in many cases rejected. And that's what became the impetus behind something like a Merit cigarette; to subjectively deliver the same amount of

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satisfaction and taste to the smoker at a tar delivery -- well, 33 percent or more less than a 15-milligram cigarette.

Q When you use the term full delivery, what do you mean by that term?

MR. OTERO: Objection to the form. You can -- I don't remember him using that term, but maybe you did.

MR. SHUB: He did.

A I think I might have said higher delivery, but there -- it's a very subjective delineation. Marlboro is considered a full-flavor cigarette. Merit was considered a lower tar. There's nothing -- I don't know of any demarcation point which would say this is high delivery, this is medium and low. But I think generally anything between 15 and 20 was considered a full-delivery cigarette; 10 to 15, medium; below 10, low delivery.

BY MR. SHUB:

Q So delivery means number of milligrams of tar?

A Yes.

Q Have you heard or did you hear the term "smoke impact" while you were at Philip Morris?

A Yes.

Q What does smoke impact mean?

A Well, it means many things to many people. My

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interpretation, and I think it was shared by some, maybe not by all, is that it's the subjective response to the various physical parts of the body that experience the touch of smoke in that specifically when you inhale a cigarette you get -- and I hate to use a very nonprofessional term, a blast in the back of the throat and in the chest, in the lungs.

Q What were other interpretations of the word smoke impact? You said there were many. Or you said it meant many things to many people. What else did it mean as far as you understand at Philip Morris?

MR. OTERO: I'll object to the question. It calls for him to speculate what other people thought.

BY MR. SHUB:

Q I don't want you to speculate. You -- well, if you know what it meant to other people, you can tell me.

A I don't. In terms of the time context we're talking about, I think it was generally considered pretty close to the definition I gave you among people at R&D, Philip Morris R&D. Perhaps now the term has been modified somewhat, but I can't speak to that.

Q Does nicotine content have any im- -- any effect on smoke impact?

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A Yes. In my opinion, yes.

Q What is the significance of nicotine in that regard?

A It is one of the major components which lends to impact.

Q In what manner does it lend to impact?

A It's the one -- I'm not sure whether it's the only one, but it's one of the components that does produce the physical sensation in the back of the throat and in the chest upon inhalation of smoke, tobacco smoke.

Q And you base your opinion on studies that Philip Morris conducted?

A Not really.

Q How do you know that nicotine produces a physical sensation in the throat and chest upon inhalation?

A Well, I couldn't swear that it does.

Q Sure.

A We performed experiments within the development group where we removed nicotine and made cigarettes out of the resultant tobacco blends. And the phenomenon that I refer to as impact was missing.

Q In your opinion what is it about nicotine that causes that chemical to produce a physical sensation in the throat and chest upon inhalation?

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A I'm not a pharmacologist. That would be beyond my realm.

Q Were you privy to any discussions at Philip Morris where that issue was discussed?

A Not specifically.

Q Were you involved at all at Philip Morris in producing a -- what was essentially a denicotinized cigarette? I've changed subject completely now, mind you.

A I just mentioned the only involvement I had.

Q Were you aware that Philip Morris at one time marketed a cigarette that was essentially nicotine free?

A Yes. This was after my time though.

Q That's what I'm getting at. You were not involved in that process?

A In fact, to add a little bit to this discussion, it absolutely amazed me that they would do this after the results that we had produced 10 years before.

Q Didn't shock you at all that at least in Philip Morris's view, the product was not commercially successful?

A No surprise.

Q Was there talk at Philip Morris of producing and marketing a denicotinized cigarette while you were there in development?

A I don't remember hearing that talk.

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Q Is it your opinion that Philip Morris was successful in producing a cigarette with less than 10 milligrams of tar but that was subjectively equivalent to cigarettes at the 15-milligram level?

A Yes.

Q Was that Merit?

A Yes.

Q In your opinion how was that accomplished by Philip Morris? How were they able to produce such a cigarette?

A Well, as I mentioned earlier, development effort was put into all aspects of cigarette construction. Many prototypes were made, changed, modified, until we finally found one that in consumer testing met the criteria.

Q What was it about the one that finally met consumer acceptability? What was it about that prototype cigarette in your opinion that led to its acceptance by consumers?

A Well, speaking broadly, it delivered lower tar but gave the same subjective response to the higher delivery cigarette.

Q In developing Merit, Dr. Gannon, were you at all -- strike that.

Was Philip Morris at all concerned with nicotine

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levels in the cigarette?

MR. OTERO: I'm going to object because it calls for Dr. Gannon to say what Philip Morris was concerned with.

If you want to answer the question, you can.

BY MR. SHUB:

Q Let's talk about the group that developed Merit which was a group you were in and managing. Were you people in that group concerned at all with nicotine levels of Merit?

A Not really in the sense that our target product had a tar spec and not a nicotine spec. For the most part the nicotine would come along for the ride with the tar, and that was not targeted specifically in terms of something we were shooting for.

Q Were you ever involved in projects where there was a nicotine spec?

A I don't remember any.

Q Were you ever involved in meetings where nicotine specs were considered?

A I don't remember any.

Q Is it your opinion that Merit was consumer acceptable because it provided sufficient impact?

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A That was part of it, yes.

Q Did the fact that there was nicotine in Merit contribute to its providing of sufficient impact?

A With the exception of that flop that you mentioned a few minutes ago, there's nicotine in all cigarettes.

Q Okay. That's true.

A Or all tobacco smoke.

Q That's true. But I want to get an answer. So the answer to my question is yes?

A Globally, yes. The same would be true about Marlboro or Virginia Slims or competitive products.

Q Sure. But Merit had nicotine in it which contributed to impact which contributed to Merit's success?

A All cigarettes fill those criteria.

Q Okay.

A Or that criterion.

Q Did you ever -- in your tenure at Philip Morris, were you ever involved in tests or projects where the nicotine levels were at such a high level that it contributed to unacceptability of a product?

A Well, I have to say yes, because say, for instance, in the development of Merit, some prototypes were made where they were deemed to be too harsh.

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Q And you interpreted the consumer reaction in terms of harshness to unacceptably high levels of nicotine?

MR. OTERO: Objection to the form.

You can answer it.

A I could not pinpoint that nicotine was the sole or contributing factor that led to harshness. I guess I could assume that that's part of it.

BY MR. SHUB:

Q Does nicotine have taste?

A If you define taste in the strictest of the four types of taste sensations, I think the answer to that is probably no.

Q Is it a flavor?

A In the same strict definition, I guess I'd probably say no to that too.

Q How -- in your experience at Philip Morris, how was it that nicotine contributed in any way to consumers' determination of a harshness or lack of in a cigarette?

A I don't think I can give you an answer to that question simply because for the most part consumers rated cigarettes when they were tested and were not asked -- with a few exceptions, were not asked in general to describe why they rejected or liked a cigarette. The terms harshness

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might come up, but I don't think we can -- in the mind of the consumer extrapolate to saying, ah, to the consumer harshness meant more nicotine. So I think that's sort of a moot point.

Q Have you ever heard of the term "superjuice" as relates to cigarette production?

A Yes, I have.

Q What does that term mean to you?

A It was a special flavoring mixture that was devised for the Merit cigarette.

Q Do you know who gave the term superjuice?

A I know who worked on the project. I'm not sure who exactly gave it that moniker.

Q But that -- strike that.

Who worked on the project?

A Bobby Kayda was the principal investigator in that.

Q Was that under your direction?

A Indirectly. He worked as a flavor chemist under Frank Daler who was the manager. Daler reported to me.

Q When you said that the Merit project didn't have a nicotine spec, what do you mean by that?

A I think we've touched on this already. The

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marketing group asked for a cigarette which delivered a certain level of tar, but they did not specify the amount of nicotine.

Q Was it your understanding that they were looking for a certain level of tar because consumers were demanding a lower-tar cigarette than what had been in the marketplace?

A That's sort of a yes, no and maybe. I think we were trying to jump the gun and to be out on the marketplace with such a product anticipating the demand.

Q Although Merit didn't have a nicotine spec per se, is it fair to say that certainly the level of nicotine was a factor that you would take into account in developing the cigarette?

MR. OTERO: Objection to form. It's vague and ambiguous.

You can answer it.

A I would say that looking at numbers strictly that nicotine would not be something we'd be targeting. Again our goal was to produce a cigarette which delivered less than 10 milligrams of tar. And the nicotine would float with whatever came along.

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BY MR. SHUB:

Q So it's your testimony that the nicotine-to-tar ratio was never a factor in the development of Merit?

MR. OTERO: Objection. That's a summarization of testimony, and I don't think I've heard him utter --

MR. SHUB: He hasn't, but I'm not trying to summarize it.

A I've lost my train of thought. Would you repeat the question.

MR. SHUB: Could you repeat the question, please?

(The record was read.)

MR. OTERO: Same objection.

A I would say that that was not a specific part of the objective.

BY MR. SHUB:

Q Were nicotine-to-tar ratios considered at all in the development of Merit?

A Not directly.

Q What about indirectly?

A Well, again if you extrapolate to the concept

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of impact, slash, flavor, we were aware of the fact that in order to get the subjective response of a higher-delivery cigarette, we might see some of that from the delivery of alkaloids.

(Mr. Nunley departed.)

BY MR. SHUB:

Q So did the delivery of alcohol -- alcohol. Did the delivery of alkaloids -- we'll get to alcohol later. Did the delivery of alkaloids have any role in Merit meeting to offer a higher degree of consumer acceptability at a lower level of tar?

MR. OTERO: Object to the form of the question. You can answer.

A I think that's implicit.

BY MR. SHUB:

Q If -- I'm sorry. If nicotine plays a role in impact and impact plays a role in consumer acceptability, why then did you not directly look at nicotine levels in developing Merit?

A I think we utilized the usual techniques that are involved in development of a cigarette product, namely

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manipulation of the components, variation of the components of the cigarette which would produce consumer acceptability. And, of course, when prototypes are developed, they are smoked initially by the people who developed them. And they get a feel right off the bat for whether or not they are going in the right direction.

Q And nicotine is a component of smoke; right?

A Correct.

Q So therefore it's fair to say that nicotine levels were manipulated in terms of trying to find the right level vis-a-vis the other components of the Merit cigarette; right?

MR. OTERO: Object to the form of the question. He testified before about components of cigarettes, and then you asked a question about components of smoke.

But you can answer.

A Again I'm going to have to -- when I get a break here, I need to have you repeat the question.

MR. SHUB: Sure. That's fair. Why don't we ask the court reporter.

(The record was read.)

A Well, I would object to the use of the term

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manipulation of nicotine levels. As I said, the various components of a cigarette were modified, and this involves blend, paper, voracity, filter, filter dilution, the whole gemisch, with the ultimate goal of producing something with less than 10 milligrams of tar delivery and, you know, more subjective response than you would expect from a 10-milligram cigarette.

BY MR. SHUB:

Q Fair enough. But weren't the levels of nicotine a relevant factor in the overall Merit product because it plays a part in impact?

A I would say indirectly and after the fact.

MR. SHUB: Can I get the question and the answer read back, please?

(The record was read.)

MR. SHUB: I want the next question and answer.

(The record was read.)

BY MR. SHUB:

Q Are there other components of smoke that

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likewise play a part in consumer acceptability?

MR. OTERO: I'll object to the form.

You can answer.

A It's kind of a vague question. The obvious answer is obviously.

BY MR. SHUB:

Q I'm just getting to something else. I wanted to lay that foundation.

A Okay.

Q That's quite a broad question.

A Yes.

Q I would expect the answer to be yes.

Are any of these components that also play a role in acceptability not specifically spec?

A Well, I guess I'd have to say I'm not sure what these components are. Tar in general is spec.

(Mr. Nunley returned.)

BY MR. SHUB:

Q Is tar the only component of smoke that's spec?

A When you say spec?

Q Well, when I say spec, I mean you have a target

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level in mind of how much tar is to be in a specific cigarette?

A Well, as I've said a number of times, the marketing department asked us to develop a cigarette developing less than 10 milligrams of tar.

Q Right. Were there any other occasions while you were at Philip Morris where you were attempting to reach a certain specification level with respect to another component in the cigarette?

A I don't remember any instances like that.

THE VIDEOGRAPHER: I need to go off the record and change tapes.

(Discussion off the record.)

(Luncheon recess)

BY MR. SHUB:

Q Dr. Gannon, is it fair to say that tar is the only component of smoke that you can recall for which there was a spec?

A Tar was usually the spec suggested, mandated, whatever you want to call it, by marketing for us to shoot for in developing products.

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Q Did the process -- strike that.

Did the development group ever mandate its own specifications for any component?

A Not that I know of.

Q Specifications as far as, you know, came from the marketing folks?

A For the most part, yeah. Or directly from Mr. Goldsmith himself at that time.

Q Do you recall him ever offering a specification for a product?

A Not specifically.

Q What type of tobacco was used in the development of Merit?

A Well, all American-type cigarettes are what we call blended, and they consist of a mixture of bright or flue-cured, burley, oriental, expanded tobacco, reconstituted tobacco.

Q Was there a higher alkaloid content in the Merit blend than in the Marlboro blend?

A I believe so.

Q What was the reason for that?

A Well, again it's sort of a drag-along concept where the things like Burley tobacco are more flavorful and give a little bit more impact. And we increased the amount

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of Burley in the Merit blend to provide the extra subjective response that we needed.

Q Was the subjective response in your opinion -- was the subjective response that you needed accomplished because you were using a higher alkaloid blend?

A That may have been a contributing factor. One of many things that went into the development of the ultimate Merit cigarette.

Q What in your opinion were the other things that went into the development of the Merit cigarette which played a part in its ability to obtain the subjective response that you needed?

A Well, I think it's a question of totality. All of the components that go into a cigarette, the blend modifications, the use of expanded tobacco, the flavoring systems, the filter and the amount of dilution necessary to achieve these tar levels.

Q The term superjuice we discussed in the morning, and I think you said that was a special flavor material that was devised for the Merit cigarette. Was that correct?

A Yes.

Q Was superjuice used in any other cigarette other than the Merit?

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A I don't believe so, but I couldn't speak authoritatively of what came after I left R&D.

Q While you were there?

A Not to the best of my knowledge.

Q What -- why in your opinion was it given the term superjuice?

A Again speculation on my part. It was a flavor mixture, a mixture of flavoring materials that seemed to give the cigarette a little extra amount of subjective response.

Q What was in the mixture as far as you are aware that gave it that extra amount of subjective response?

A I don't know now and never did.

Q Did -- is it your testimony that -- well, strike that.

Did anyone at Philip Morris know what was in the superjuice to give it that extra amount necessary for the subjective response you wanted?

A Well, obviously some people knew what was in it.

Q Who did?

A Well, Bobby Kayda was the principal investigator who devised it. And the formulation was probably known throughout the flavor and development

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division, and ultimately the people who applied it in the factory had to have a formula to go from.

Q Did Howard Spielberg play a role in the flavor development of Merit?

A Yes, probably.

Q Would you say you had a hands-on role in that flavor development?

A No.

Q Did Mr. Daler have a role in the flavor development of Merit?

A I guess I'm going to have to ask you to define that. As you said to me, hands-on? Daler was a manager; he probably did not have a hands-on.

Q Would you think that Mr. Daler had knowledge of the flavor mixtures for Merit?

A Probably.

Q When you use the word, the phrase "subjective response" -- we may have went over this before, and I apologize if we did, but what's your meaning of that phrase, subjective response?

A Well, I guess in -- excuse me. In global terms it is how the smoke is perceived by a consumer.

Q And the level of alkaloids that are in the smoke plays a part in that perception in your opinion?

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A Yes.

Q In your opinion if the alkaloid levels are too low, will you not achieve the desired subjective response you're looking for?

A Depending on the individual project -- well, in a Merit-type program where you're trying to achieve the subjective response of a higher-delivery cigarette, the answer to that was most likely yes.

Q So in order to achieve the subjective response you're looking for, isn't it necessary to closely follow what the alkaloid levels are in the cigarette?

A Again as I think I mentioned earlier, that's sort of an afterthought. The blends in the flavoring systems are modified to the point where to the individual smokers who are making the prototypes are getting what they feel is the requisite subjective response, and then after the fact we take a look at what the tar and nicotine levels are. If the nicotine -- excuse me, if the tar level came out 11.4, that would not have met the tar specification for the Merit program.

MR. SHUB: Could you repeat just the answer.

(The record was read.)

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BY MR. SHUB:

Q What I'm a little confused about is this issue about the afterthought. If you have a targeted level for tar, isn't it really a before thought? In other words, if the tar level isn't right, then whether or not it's a subjective -- whether or not it's subjectively acceptable won't matter.

MR. OTERO: I object to the form of that statement.

BY MR. SHUB:

Q Is that confusing?

A Yeah.

Q That's fair. I asked. Let me try again. You had a certain tar spec that you were working with, so that was the first consideration. Get to the tar spec, and then you play with the rest of the cigarette to achieve the desired subjective response; isn't that fair?

A Well, it's a hand-in-glove kind of thing. They have to go together. Dovetail. You have to have the subjective response and the tar spec met. It was a dual -- what's the word I'm looking for. It was a dual specification.

Q Right. And alkaloid levels play a part in that

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equation of meeting subjective response and tar levels?

Well, let me rephrase it. Alkaloid levels play a part because it plays a part in the subjective response you're looking for; correct?

A Alkaloids are present in the tobacco and they do tend to lend themselves to the subjective response, yes.

Q So therefore why did Philip Morris not concern itself with the alkaloid levels in trying to develop a cigarette that was subjectively desirable at the same time it had the proper tar specification?

MR. OTERO: Object to the form of the question. I think it calls for some speculation.

But you can answer it if you know.

A I can only say that -- the way you've phrased the question, what did Philip Morris think --

BY MR. SHUB:

Q You.

A I didn't set the specs, and Philip Morris as a entity did not set the specs. The marketing department set the specs.

Q When I say Philip Morris, I mean the department in which was acting on its behalf. In this case it's the marketing department. So let me try it again. Why was it

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that in trying to develop the Merit cigarette you did not look at alkaloid levels until after the fact, since to me it would seem like it would be important since it plays a role in subject -- in the subjective response of the consumer?

MR. OTERO: I object to the form of the question.

You can answer.

A Criteria were twofold: tar level below 10 milligrams, subjective response equal to a 15-milligram cigarette. No mention of nicotine levels. And that's why I say it goes along with whatever it takes to make a subjectively-acceptable cigarette below 10 milligrams.

BY MR. SHUB:

Q Let me try it one more time. But if the alkaloid levels play a role in determining the subjective response to the cigarette, why would the development group not look at alkaloid levels in trying to achieve that desired product?

A I would have to say that that's not the way that development people work.

Q Okay.

A When you talk about alkaloid levels, that is not all there is to a particular type of tobacco.

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Q Right.

A Burley tobacco has a different response than bright tobacco. Burley tobacco just happens to have more alkaloid. So the basic challenge for the development people is to mix blends of tobacco and combine it with the filter and the paper and everything else --

Q Okay.

A -- that will produce the twofold goals that we were shooting for.

Q I understand. Therefore though in picking, for example, more Burley than bright for a particular cigarette, is the fact that Burley has more alkaloid a consideration in choosing Burley over bright?

A It is a consideration. One of several.

Q And is it fair to say that Philip Morris while you were there in development did choose certain tobaccos over other tobaccos or blended it in such a fashion because alkaloid content of that tobacco was a factor?

A At the risk of seeming obtuse, I think you're getting the horse before the cart.

Q Okay.

A As I've said over and over, the alkaloid levels were a consideration after we achieved the proper degree of subjective response.

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Q Okay. I guess what -- I'm just confused that if alkaloid levels play a part in the subjective response, why did you not consider them during the process development as opposed to after the fact?

MR. OTERO: Objection. That's been asked and answered. Many times.

But you can answer.

A When I say after the fact, maybe we're talking about different time frames.

BY MR. SHUB:

Q Okay.

A After the prototype is made, then they would run it through the analytical scheme to see what the tar was and see what the nicotine was at the same time. That's the after the fact. Not after the product is out on the market and that kind of thing, but it's an immediate response after you've made a prototype and you're getting closer to what you feel -- I mean, many prototypes are made. Many prototypes were tested at various levels before we finally even got into wholesale consumer testing.

Q Uh-huh.

A Much less into the marketplace.

Q Okay. Alkaloid levels are determined by the

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type of tobacco used, by what's blended?

MR. OTERO: I'm going to object to the form. I think it's vague.

You can answer.

A It is vague. We've been over this in terms of all tobaccos contain nicotine.

BY MR. SHUB:

Q But they have different alkaloid levels?

A Yes.

Q Depending on the tobacco used?

A Exactly.

Q In the development of Merit, did there ever come a point in where making the prototype you decided to blend different tobaccos together because you were looking to achieve a certain alkaloid level in combination with the rest of the product?

A I'd have to answer that by saying the way you've phrased the question, the answer is no. We've already mentioned that alkaloids provide a certain amount of impact. When smoking.

Q Sure.

A And we were looking to compensate for the obvious loss of subjective response when you lower the tar

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level 50 percent. Or 35, 40 percent.

Q When you lowered the tar level in Merit by 35 or 40 percent, you did not attempt to also lower the nicotine level by 30 to 40 percent; is that correct?

A There was no definite spec for nicotine. Depending on what blend level or blend mixture was finally used, the nicotine would come out wherever it came.

Q Was the blend level that was finally used driven in any respect by desire to maintain or to -- by desire to maintain a certain alkaloid level?

A Specifically, no.

Q What about generally?

A Well, we're talking over -- the same subject over and over again.

Q I'm trying different ways to try and maybe -- because maybe I'm not being clear or --

A Well --

Q - as one -

A Maybe I'm not being clear.

Q No, you're being pretty clear.

A Because I think I'm answering the same -- the questions you're asking. But part of the situation involves subjective response. One of the two main goals. In order to do that, we had to modify all the components that went

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into the cigarette.

Q Okay. Let me stop you there. Alkaloid is a component that goes into the cigarette; correct?

A No.

Q It's a component that goes into the tobacco; correct?

A It is in tobacco.

Q Right.

A It doesn't go.

Q Therefore did you modify the blend you used in any regard because of the alkaloid content of that tobacco?

A As we've mentioned many times, alkaloid levels are a consideration in terms of impact of the smoke as part of the overall subjective response. To that extent the answer is a qualified yes.

Q Okay. How long were you director of development? You began that task in 1975?

A Yes.

Q And you remained there until?

A 1979.

Q And during those four years were you concerned with the development of Merit during those years?

A Yes.

Q What were other projects that you were

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supervising during that period?

MR. OTERO: Asked and answered.

You can answer.

A In general, modifications and development of other cigarette brands. Most of them for the domestic market, some of them for overseas. Some of the processes that went on we've already talked about; expanded tobacco, reconstituted tobacco. Those are the highlights.

BY MR. SHUB:

Q In developing Merit was anything differently done than is typically done in developing any cigarette?

A In terms of the overall scheme?

Q Right.

A I'd say the answer is no.

Q Were cigarettes developed in response to marketing concerns? Is that why a cigarette prototype was developed; because marketing said, We want to develop X type of cigarette?

A For the most part.

Q And during the period '75 to '79, was there an emphasis on the development of what's called low tar cigarettes?

A Yes.

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Q Why was that?

A As we stated before, there seemed to be perceived notions that higher-delivery cigarettes might be problematical in terms of health effects. These are reports from outside that were being bandied about. Philip Morris marketing people, I believe, my opinion, were responding proactively to providing the consumers with what they anticipated they would want based on what they were hearing outside.

Q Again during that period, '75 to '79, you're not aware of any internal Philip Morris research into the health effects of high or low tar cigarettes?

A No, I'm not.

Q Do you have any -- strike that.

Did you while you were at Philip Morris have any knowledge of the FTC method of measuring tar and nicotine?

A Yes.

Q And what was your understanding of the manner in which tar and nicotine were measured according to the FTC requirements?

A Well, at one time I knew exactly how it was done. You smoked a cigarette with a certain amount of what was called resistance to draw, puff cycle of two seconds, so

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many puffs, whatever, and the tar and nicotine were collected and measured.

Q Did you ever participate in any discussions at Philip Morris where the issue of the reliability of the FTC measurement method was considered?

A I don't recall any specific discussions of that sort.

Q Do you recall any discussions at Philip Morris where it was articulated that the FTC method didn't really measure tar and nicotine in the manner that smokers smoke cigarettes?

A I think I may have heard people say that it was -- those things were said outside Philip Morris.

Q Do you recall any studies inside of Philip Morris regarding the reliability of the FTC method of measuring tar and nicotine?

MR. OTERO: I'll object to the vagueness of the term reliability.

But you can answer.

BY MR. SHUB:

Q The accuracy of the FTC method of measuring tar and nicotine.

A No.

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Q Did Philip Morris ever study whether FTC rankings of tar and nicotine were reliable?

MR. OTERO: Same objection.

You can answer.

A I guess I'd have to ask you what you mean by reliable.

BY MR. SHUB:

Q Whether they reflected the -- well, let me rephrase the question then and ask it more broader. Were there any studies at all that impacted the FTC's ranking method at -- strike that.

Were there any studies at Philip Morris that related in any way to the -- a consideration of the FTC measurement of tar and nicotine?

A Not that I recall.

Q In 1979 you moved on to greener pastures?

A I didn't go anywhere. My position was changed.

Q Was it a promotion or a lateral move?

A It was a lateral.

Q To what?

A Director of process development.

Q So you went from director of development to director of process development?

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A That's correct.

Q Was that a new position that was created?

A That's correct.

Q So you had no predecessor?

A I was my own predecessor.

Q Who succeeded you as director of development?

A That position was eliminated.

Q What was the distinction as far as you understand between the position of director of development and director of process development?

A I no longer had responsibility for product development.

Q Who took on that responsibility?

A Leo Meyer.

Q But he wasn't a director of product development?

A Yes, he was. A new position was created.

Q And what was that called?

A Director of new product development. Or product development.

Q Okay. So really is it fair to say the -- the development directorship was broken down into process and product?

A That's correct.

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Q What -- well, strike that.

When you were director of development, you were responsible for both process and product; correct?

A Correct.

Q Did your responsibilities change with respect to the process end of things when you became just director of process development?

A I retained several divisions which I had had, and several new ones were added.

Q What divisions did you retain?

A I don't remember the names of them. They were the ones working on expanded tobacco and reconstituted tobacco.

Q What were the ones that were added?

A I picked up the division called -- I can't remember specifically the name. It was the division that was involved in the engineering aspects of buildings and grounds for R&D, and the electrical engineering group.

Q What types of projects were the electrical engineering folks working on?

A They were maintaining the equipment that was used in R&D and working on modifications and new types of things.

Q Who did you report to when you became process

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development director?

A Dr. Robert Seligman.

Q Who is director of research, vice president of research?

A Vice president.

Q Where was Dr. Wakeham at that time?

A I think he had been transferred to what we called the TTG, the tobacco technology group.

Q You eventually ended up there too.

A That's correct.

Q And Dr. Dunn was still with the company at that time?

A Yes.

Q As director of development did you interact with Dr. Dunn professionally?

A Professionally once in a while.

Q How would there be an interaction? On what kind of project would you and Dr. -- strike that.

Did you and Dr. Dunn ever work together in any manner on any project?

A Directly, no.

Q Indirectly, yes?

A Well, as a senior executive in R&D, I sat in on all the project reviews, and project reviews that came out

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of his area were listened to by myself and others.

Q So when you sat -- you were -- you attended presentations of Dr. Dunn's group?

A Yes.

Q The 1600 project; does that ring a bell to you?

A No.

Q Behavioral pharmacology group; did you attend presentations in which they made presentations?

A I don't remember the term behavioral pharmacology, but Dr. Dunn's group. Whatever they called it.

Q Did you review written reports that came out of Dr. Dunn's group if you were on the distribution list for them?

A What was the verb? Did I what?

Q Did you review?

A I read them after the fact. After they were printed and published, whatever you want to call it.

Q Would there come a time that you would be involved in discussions about the conclusions reached by Dr. Dunn's group on certain projects they were working on?

A Well, I can imagine one instance where his people were giving project reviews that I might have offered a comment or two.

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Q What instance was that?

A The annual project reviews of his people.

Q How long did you keep the position of director of process development, from '79 until --

A '81.

Q And you moved positions in '81?

A Excuse me?

Q You moved positions in 1981?

A Yes.

Q To what?

A Director of new product development.

Q You came back?

A Not really.

Q Was that the position that Leo Meyer held?

A No.

Q He was director of product development; correct?

A Correct.

Q Now you became director of new product development?

A That's correct.

Q Was that a new position?

A That's correct.

Q Who took over as director of process

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development?

A Lou Torrono.

Q Do you know why you were transferred from director of process development to director of new product development?

A I know what I was told.

Q What were you told?

A Dr. Seligman was being transferred to the TTG, and Dr. Max Houserman from FTR in Switzerland was assuming his role. Shortly before this came up, Dr. Houserman had decided to step down from the day-to-day running of the R&D operation in New Shatell, Switzerland because he felt that someone needed to take over what was, I guess, best described as disarray in terms of new product development. He was going to take that role on himself. When he was transferred to Richmond to take over as vice president of R&D, I was transferred to Switzerland to take over that job of new product development director.

Q

A

REDACTED

Q

A

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Q

A

Q So you went over to Switzerland in 1981?

A Correct.

Q Why was the job of new product development a job that was located in Switzerland, if you know?

A Because it was for Philip Morris Europe.

Q You were developing products for market -- for markets in Europe?

A That's correct.

Q Who did you report to?

A Jack Gibson.

Q What was his title?

A Vice president of operations, comma, EEC.

Q So you were now --

A Excuse me. At that time it was vice president of operations, Philip Morris Europe.

Q So you were now employed by Philip Morris Europe at this point?

A This is vague. I was still an employee -- I was operating within Philip Morris International. The technicalities I'm not quite clear on.

Q Was there a -- at this time was there a director of new product development in Richmond as well?

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A It was still Leo Meyer.

Q Did you and Mr. Meyer interact to discuss products?

A When?

Q During the period that you were over at Philip Morris Europe.

A On occasions I would travel back to Richmond and sit in on some of the meetings. Not necessarily totally product development, general, but -- and listen to some of the things that were going on.

Q How long were you over in Switzerland?

A About two years.

Q Two?

A Close to two years.

Q Until around 1983?

A Uh-huh. I came back in May of 1983.

Q And what position did you assume when you came back here in May of '83?

A Director of new product development.

Q For Philip Morris USA?

A For the tobacco technology group.

Q When did the TTG come into being?

A I'm guessing five or six years before then. That's '85. '78, '79. That's a guess.

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Q What was the mission of the TTG?

A To take the technology developed in Richmond to countries around the world, manufacturing facilities and research and development facilities within the Philip Morris groups around the world.

Q How would you characterize the move from the director of new product development for Philip Morris Europe to director of new product development for TTG? Would you characterize that as a lateral move?

A Yes.

Q How many Philip Morris employees were in the TTG?

A I'm guessing 40. 45, 50. I don't know. I'm not sure.

Q Was there someone that headed up the TTG at that time in '83?

A Yes.

Q Who?

A Frank Resnik.

Q Who did you report to in the TTG?

A Frank Resnik.

Q Resnik. And you were here in Richmond; correct?

A That's correct.

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Q Were you still attending meetings of the research and development folks here in Richmond?

A Occasionally.

Q You weren't as involved with that group as you were prior to going to Europe?

A No. I was part of it then, so --

Q And you were not considered part of it in the TTG? You were not part of research -- sorry. You were not part of the research department at Philip Morris?

A No, I was not.

Q Were you physically housed in the same place as the research department?

A I was officed in the operations center. Part of the R&D group was there, part of it was still in the tower building.

Q Where was Dr. Dunn's group at that time?

A I believe they were still in the research center tower and that complex around it.

Q In 19- -- strike that.

You remained with the TTG from 1983 through '85?

A That's correct.

Q

A

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Q Are you represented today by lawyers that also represent Philip Morris?

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A I believe so.

Q How did that come about that your representation -- I'm sorry. How did it come about that they ended up representing you?

MR. OTERO: I'll caution you, Mr. Gannon, to, if you can, you know, answer that question without divulging the substance of any conversations between you and me or any other counsel that you have, you can answer it. Otherwise I'll instruct you not to answer.

MR. SHUB: And substance means substance. It doesn't mean I'm being called for a deposition, will you represent me. That's not substance; right?

MR. OTERO: Listen, I don't want you to describe any of the conversations. You can tell him about the fact that the conversation happened, but do not describe the nature of the conversation.

BY MR. SHUB:

Q Did a conversation happen between you and counsel?

A Yes.

Q Is it Philip Morris -- strike that.

Are you personally paying for your counsel here today?

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A I haven't received a bill, so I don't know.
Q Do you expect to pay?
A I hope not.
Q Is it your understanding that you won't be paying?
A It's been implied but not stated.
Q Did you meet with counsel to prepare for this deposition?
A Yes.
Q When was that?
A Yesterday and the day before.
Q How long did you meet yesterday?
A From mid morning to mid afternoon.
Q Couple hours?
A Three or four.
Q Who did you meet with?
A Mr. Otero, Mr. Davis and Mr. Burton.
Q And who did you meet with the day before?
A Same.
Q How long did you spend the day before preparing?
A Well, after my tennis match I arrived at about 11 o'clock and left about 4 or 4:30.
Q Did you receive -- strike that.

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Did you look at any documents in preparation -- during your preparations?

A No.

MR. SHUB: Let's take a five-minute break.

(Recess)

(Mr. Nunley returned.)

(GANNON EXHIBIT NO. 1 was marked for identification.)

BY MR. SHUB:

Q Dr. Gannon, the court reporter has placed before you what's been marked as Gannon Exhibit 1. It's Bates stamped 100734574 through 578. And just ask you to take a look at this document.

While you're looking, Dr. Gannon, just keep in mind what I'm going to ask you about is why the compounds that are listed on Pages 3 and 4 of the exhibits are the compounds that Philip Morris was interested in studying. And when you're done reviewing it, you can let me know, and I can ask you questions.

A I read over it.

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Q First of all, is this document memo addressed to you?

A Yes, it is.

Q And it's from an E. B. Sanders?

A Yes, it is.

Q Dated January 31, 1974?

A Correct.

Q Was Mr. Sanders reporting to you at this time?

A Yes.

Q And the subject is the testing of nicotine analogues; is that correct?

A Yes.

Q Do you see on Pages 3 and 4 of this document there are a list of compounds? Do you see that?

A Yes.

Q And if you look on Page 2, the last paragraph says, Appended is a list of compounds now on hand which we are interested in testing. Do you know why these compounds were selected as those that Mr. Sanders on behalf of Philip Morris was interested in testing?

MR. OTERO: I'll object to on behalf of Philip Morris, but you can answer the question.

MR. SHUB: Well, okay.

A Well, stretching way back into the memory

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banks, I'd have to assume that these are compounds that they had on hand based on their synthetic program.

BY MR. SHUB:

Q Do you recall receiving this memo?

A No.

Q Do you recall discussing this memo or the contents of this memo with Mr. Sanders?

A Not really. 1974.

Q In the second sentence on the first page, Mr. Sanders makes reference to a pharmacological testing program and its lack of feasibility. Do you see that?

A Yes.

Q Do you know what he was referring to with respect to a pharmacological testing program, what that would entail?

A Not specifically. I'm not sure what he meant by that because as he says in the last sentence of the whole thing, we are only chemists. And I don't know what he had in mind in that. And after 20-plus years, it's not fair for me to speculate what's in Ted's mind at that time.

Q Have you spoken to Ted recently?

A No.

Q Do you know where he is?

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A No.

MR. SHUB: Okay. Why don't we mark the next exhibit.

(GANNON EXHIBIT NO. 2
was marked for identification.)

MR. SHUB: I love giving out exhibits. It makes my weight a lot less to carry going home.

MR. GADDES: Are we going to take make a 5 o'clock flight?

(Discussion off the record.)

(Mr. Nunley departed.)

BY MR. SHUB:

Q Dr. Gannon, while you're reading this, I just want to maybe try to speed things up a little bit because I'm not going to ask you about the whole document. In particular I'd ask you to look at the first paragraph under the heading Demographics on Page 1 of this exhibit. And focus your attention -- reading on that paragraph as well as the carryover -- as well as the first paragraph on Page 2.

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A I've skimmed over it.

Q Okay. Exhibit 2 is a memo from Myron Johnston to Dr. Seligman dated May 21, 1975, Bates stamped 0000024921 through 26.

And do you see on the last page of this exhibit, Dr. Gannon, you are CCd?

A Yes, I do.

Q And did you regularly read memos while you were with Philip Morris in which you were CCd on?

A I tried to keep up.

Q Okay. Do you recall receiving a memo -- this memorandum?

A No, I don't.

Q Do you have an understanding as to why you would have been on the list of distribution for this memo?

A Yes, I do.

Q Tell me why, please.

A I was the director.

Q And these are directors that are listed here?

A Gannon, Osdene and Thomson are.

Q I'm sorry?

A Gannon, Osdene and Thomson were.

Q Okay.

A It was sort of a courtesy to copy the directors

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whether they read it or not.

Q You don't know whether you read this memo; is that correct?

A That's correct.

Q If you look at the second sentence on the first page under Demographics, it says with respect to studies of Marlboro's market penetration that most of these studies have been restricted to age 18 and over, but my own data which includes younger teenagers shows even higher Marlboro market penetration among 15- to 17-year-olds. Do you see that?

A Yes, I do.

Q Were you aware that Philip Morris -- strike that.

Were you aware that Mr. Johnston had data that studied the smoking habits of 15- to 17-year-olds?

A I don't recall that.

Q Did you ever participate in a discussion at Philip Morris with where the smoking habits of 15- to 17-year-olds were discussed?

A I don't think so.

Q Did you ever have a conversations with Mr. Johnston professionally?

A I can't recall any. It may have happened.

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Q What was Mr. Johnston's position at this point in time with Philip Morris?

A I have no idea. Based on what he's written, he's either a demographic economist or economic demographer, but I don't know what his expertise was. I think he was more of an economist.

Q If you knew in 1975 that Mr. Johnston was studying smoking patterns among 15- to 17-year-olds, would that surprise you?

A It probably would because I didn't know it beforehand.

Q Was it your understanding while you were at Philip Morris that Philip Morris studied smoking habits of individuals under the age of 18?

A I don't think so.

Q Was there a policy at Philip Morris while you were there with respect to whether it was proper to study smoking habits of individuals under age 18?

A I know of no such policy, whether it existed or not.

Q Did you ever participate in discussions at all at Philip Morris regarding smoking habits of any age group?

A I would suggest that only to the extent that I might have sat in a meeting where topics like this were

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discussed.

Q And I'm asking you whether you have any specific recollection of such a meeting?

A None whatsoever.

Q Okay. In 1981, Dr. Gannon, would you have attended meetings of the research and development department at Philip Morris?

A Philip Morris where?

Q I'm sorry?

A Philip Morris where?

Q Richmond.

A Unlikely after September because I was in Switzerland. Prior to that, in the TTG I might have.

MR. SHUB: Let me introduce this next exhibit.

(GANNON EXHIBIT NO. 3
was marked for identification.)

BY MR. SHUB:

Q I'd like you to focus your attention, if you could, on the first Point 1 of this document. There's some handwritten notes. I just wanted to ask you about those.

MR. OTERO: Have you identified the document on the record?

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MR. SHUB: Not yet.

BY MR. SHUB:

Q Mr. Gannon -- Dr. Gannon, I placed before you what's been marked as Gannon Exhibit 3. It's Bates stamped 2010065670 through 75. It's a series of handwritten notes. Its title is R&D at the top.

And first let me ask you whether you recognize this handwriting?

A No.

Q It's not yours; correct?

A I hope not.

Q Why is that?

A I can't read it. I can read my own writing. No one else can, but I can.

Q It's dated February -- 2-18-81. And I just bring this exhibit to your attention in order to refresh your recollection possibly with respect to whether or not you sat in any meetings where the issue of the smoking habits of 15- to 19-year-olds. And I mention that because I believe in the upper half of the document is a handwritten note that says, 15 through 19 age group declining, All trends against us. Do you see that note? That's on about the --

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A Yes.

Q -- seventh or eighth line?

And I don't represent to you, Mr. Gannon, that I have any knowledge as to whether you were even at a meeting or whether this was a meeting, but I just bring this to your attention with the thought this may refresh your recollection. Does it refresh your recollection as to whether you attended any meetings at R&D where the 15 through 19 age group smoking habits were discussed?

A Trying to deconvolute that question. I think the answer is no.

Q That's an interesting word. Is that a word, deconvolute?

A It is now.

Q Thank you. Dr. Gannon, do you recall attending what was known at the company as the Richmond meetings?

A Yes.

Q What were the Richmond meetings? Strike that.

Who attended the Richmond meetings?

A The population of the attendees varied from time to time. It was a monthly meeting where some of the New York executives would visit Richmond and spend a day being briefed on topics of projects going on in R&D.

Q When did you first begin attending these

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meetings?

A Back in 1972. As a speaker. I was not a regular attendee.

Q And did these monthly Richmond meetings go on continuously from 1972 on as far as you were aware?

A I don't know when they started. I assume they were going on before then.

Q Were you attending them on any kind of basis, regular or not, from 1972 until you left the company?

A I began to attend them on a more or less regular basis when I became a director in 1975.

Q And attending them on a regular basis from 1975 until when?

A Probably 1981 when I went to Switzerland.

Q Okay. Do you have an understanding as to what the meaning of the phrase WS cooling compound -- do you know what that means?

A Yes.

Q What was WS cooling compound?

A Do you want the chemical structure or the name or what?

Q I want to know what it was used for.

A For cooling cigarette smoke.

Q Was it used in menthol cigarettes?

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A No.

Q It was used in nonmenthol cigarettes?

A Yes.

Q What was the purpose of using WS cooling compound?

A To produce a cooling effect in the smoke without the taste of menthol.

Q Do you know whether WS was ever found to be a carcinogen?

A I cannot quote you the testing protocol that went on, but my recollection is that this was -- enough testing was done on it to indicate that it was totally nontoxic in all aspects.

Q And it was also -- it was not carcinogenic; correct?

A That's included in my definition, yes.

MR. GADDES: Can I go off the record to clear something up?

(Discussion off the record.)

BY MR. SHUB:

Q Are you familiar with a project Sword, S-W-O-R-D? Do you recall that project?

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A Not really.

Q You mention the test with respect to the toxicity of WS. Is that tests that were conducted internally at Philip Morris?

A No.

Q Did Philip Morris use any compounds that were found to be toxic in cigarettes? And when I say found, I mean either internally or external reports suggesting that a certain compound was toxic.

A Well, without knowing the definition of toxic, I think my answer would have to be not knowledgeable. Things were not added that had any form of toxicity.

Q Did Philip Morris use any compounds that were known to be carcinogens?

A Use in terms of additives?

Q Additives.

A Not to my knowledge.

Q Is a flavoring package considered to you to be an additive?

A I'm not familiar with the term flavoring package.

Q That's not -- you didn't use that terminology to describe favors at Philip Morris?

A I did not, no.

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Q Flavors were flavors; there wasn't a flavor package?

A Correct.

Q Are flavors additives?

A I think so.

Q What else do you consider to be additives that are not considered to be flavors?

A The only thing I can think of was a class of materials called humectants.

Q What are humectants?

A Humectants are, as I understand it, materials that are added to attract moisture to the tobacco to keep things moist.

Q To attract moisture.

Let me place before you what will be marked as Gannon Exhibit 4.

(GANNON EXHIBIT NO. 4
was marked for identification.)

BY MR. SHUB:

Q And I would direct your attention to the second page under the heading WS. This document is Bates stamped 1003713887 through 88.

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Dr. Gannon, do you see your name on the front of this document as being present at a new products meeting on November 11, 1980?

A Yes, I do.

Q Do you recall attending a meeting of the new products -- a new products meeting on that date?

A No, I don't.

Q Look at Page 2 if you would, sir, under the heading WS. In the first paragraph of that heading, there's a reference to an encouraging number of WS smokers. Do you know what that reference means, WS smokers?

A A long time ago, but I'm assuming it means cigarettes that were treated with the WS cooling compound as test prototypes.

Q Was the WS cooling compound ever -- first of all, is that considered an additive?

A Yes.

Q Was that ever sold commercially --

A Yes.

Q -- cigarettes containing WS cooling compound?

A Yes.

Q Did you do any work on developing WS?

A Did my hands touch it? No. Was I involved in it? Yes.

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Q What was the purpose in the development of WS?

A As previously stated, to develop a cigarette that produced a cooling sensation in the smoke without the taste of menthol.

Q Was WS included in commercial Merit cigarettes?

A No. Not to my knowledge.

Q How was WS applied on a commercial basis to cigarettes?

A I don't recall.

Q Do you see in the last line of that paragraph it says, WS on the paper looks encouraging, although there may be a problem related to WS in the side stream. Do you see that reference?

A Yes.

Q Do you have an understanding as to what that sentence means in terms of what the problem was related in the side stream?

A Any answer would be an assumption. I can only speculate that when you apply an additive to the paper for delivery into the smoke, as the cigarette burns statically, some of the material being volatile might go off into the side stream. Why that is considered a problem, I'm not sure.

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(GANNON EXHIBIT NO. 5
was marked for identification.)

BY MR. SHUB:

Q I would direct your attention, Dr. Gannon, to Roman numeral 6 on this document. Gannon 5 is Bates stamped 0000017954 through 56. It's minutes of a Richmond meeting dated January 16, 1979.

Mr. Gannon, were you CCd on this document?

A Yes.

Q Do you believe that's because you attended this meeting?

A Yes.

Q Looking at Point 6, do you recall any discussion of the nicotine levels of Philip Morris brands as indicated on this document?

A No, I do not.

Q Do you recall attending a -- any meetings at Philip Morris that were considered Richmond -- that were considered Richmond meetings where the nicotine levels of Philip Morris brands were discussed?

MR. OTERO: Asked and answered.

You can answer?

THE DEPONENT: Excuse me?

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MR. OTERO: I made an objection that the question has been asked and answered, but you can answer the question.

A The answer is yes.

BY MR. SHUB:

Q And when -- and in what context were the nicotine levels of Philip Morris brands being discussed?

A Tar and nicotine deliveries of all prototypes were usually listed.

Q But did you discuss the nicotine levels specifically?

A I can't recall that in any detail.

Q Is it fair to say though that you believe you did discuss specifically, without knowing the detail, of nicotine levels of cigarettes?

A I have to assume that that came up from time to time.

Q Here it says, Pakistan K2 cigarettes have tobaccos with a high nicotine level; Characteristics of these tobaccos could be studied for possible future use. Do you recall discussing the nicotine level of Pakistan K2 cigarettes?

A No, sir.

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Q Was Pakistan K2 cigarettes cigarettes that -- where the tobacco was grown offshore?

A I have to assume so.

Q Would you assume that the Pakistan K2 cigarette tobacco was grown in Pakistan?

MR. OTERO: I'll object. That calls for speculation.

A That's too speculative for me to answer. I don't know if that means it's a Pakistani cigarette.

BY MR. SHUB:

Q Do you have an understanding of what the Pakistan K2 refers to?

A Not at all.

Q Do you recall at Philip Morris ever studying cigarettes that had high nicotine levels for potential use in Philip Morris products?

A I'm afraid that's a little too vague for me to pick up on because, you know, as we've discussed, relatively speaking Burley tobacco has higher alkaloid level than Bright.

(GANNON EXHIBIT NO. 6
was marked for identification.)

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BY MR. SHUB:

Q I would direct your attention, sir, to Roman numeral 3. This is a Richmond meeting minute, Bates stamped 0000017952 through 53.

And it appears that you attended this meeting as a result of your being CCd; is that correct?

A I think it's the other way around. I got a copy because I was there.

Q Do you recall a Project Elite?

A No, sir.

Q Do you see the first paragraph under Roman numeral 3?

A Yes, sir.

Q Do you recall discussion regarding the country of origin of tobacco used in Kent III?

A No, sir.

Q If you look at the second paragraph under Roman numeral 3, it says, The methodology of consumer testing of product candidates in both the three-milligram and one-milligram ranges need to be worked out. Is your understanding that the milligram reference there is to nicotine levels?

A I'm assuming it's tar.

Q Were there -- strike that.

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Why do you make that assumption?

A Well, offhand I can't picture a cigarette delivering three milligrams of nicotine.

Q Okay.

A And I think Kent III, speculation now, was a three-milligram cigarette. That's why it was named that. That's even more speculative.

(GANNON EXHIBIT NO. 7
was marked for identification.)

BY MR. SHUB:

Q The court reporter placed you what's been Bates stamped as Gannon Exhibit 7 bearing the Bates stamp numbers 0000017949 through 51, and it appears that you attended this meeting on March 13, 1979, a Richmond meeting.

And I would direct your attention to Roman numeral 1-A. It says, Since a one-milligram product will have little impact or taste, consideration should be given to obtaining the maximum puff count possible at one milligram; The product should give a smooth smoke devoid of harshness. Do you recall attending a meeting on March 13, 1979 where a one-milligram product was discussed?

A No, sir.

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Q Why in your opinion, Dr. Gannon, would a one-milligram product have little impact or taste?

A There just isn't that much smoke or smoke components coming through the end of the cigarette.

Q And the one milligram refers to the tar level?

A Yes, sir.

Q And what is the relationship of impact to tar?

A I can't give you a quantitative assessment of that question.

Q Well, you don't have to give me a quantitative. But in your experience in product development, how does impact relate to tar? Do higher tar cigarettes tend to have more impact?

A Generally.

Q And is that because they have more alkaloids or -- strike that. Why do the higher tar cigarettes tend to have more impact?

A I can't be specific about an answer to that question. One can assume that you're getting more tobacco components, smoke components into the smoker at a higher level than you are at a lower level.

Q What about the taste aspect; why would a one-milligram product have little taste?

A Because there's little in one milligram per

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cigarette to impart in the taste.

Q Why would consideration -- or why do you understand the consideration should be given to obtaining the maximum puff count possible, one milligram? How would the puff count relate to this question of impact or taste?

MR. OTERO: Objection to the form. It's compound and, I think, assumes that views are held by Dr. Gannon that he hasn't testified to.

But you can answer.

A Again would you repeat the question.

BY MR. SHUB:

Q Let me rephrase it. Was there ever a discussion while you were at Philip Morris that a maximum puff count should try to be obtained with respect to a low tar product?

A This is the first reference to that that I've seen today, and memory fails beyond that.

Q You don't have an independent understanding as to why maximum puff count would be desirable?

A If you're going to get nothing, you want to get a lot of it.

Q It says, The product should give a smooth smoke devoid of harshness. What's your understanding of smooth

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smoke? How is that accomplished?

A Again it's the totality of modification of all the components that go into a cigarette.

Q Is there one component that is more important than another in determining whether a smoke would be smooth?

A One component? I doubt it.

Q What's the most important component in determining whether a cigarette is smooth?

A I have no idea.

Q Did you know that at one time?

A I disagree with your premise that there is one component which leads to smoothness. Perhaps it's the contrary. It's the absence of harshness.

Q What's the one component that contributes to harshness?

A I don't feel that I can say there is one component that leads to harshness.

Q What are the primary components that lead to harshness?

A I don't feel I'm qualified to answer that. As we've discussed earlier, there is more impact from the alkaloids.

Q Is there a relationship between alkaloids and harshness?

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A Absent anything else, probably. But cigarette smoke is such a complex mixture that I hate to answer that question as it's stated so globally.

Q Was there ever a time that consideration was given to adding components to the smoke in order to minimize harshness of alkaloids?

A I think your definition or your terminology is a little loose. How do you add components to smoke? Additives --

Q Let me rephrase it. To add components to the cigarettes to reduce the harshness of the alkaloids. Or to mask the harshness maybe.

MR. OTERO: I'm going to object to the question because I don't really understand it.

But if you do, by all means, answer it.

A Vague recollection, back of the mind tells me that at one point things like adding humectants might possibly do that. I can't remember if the experiments were carried out and if so what the results were. But I'm trying to answer as best I can your question.

MR. SHUB: The next one is Exhibit 8, please.

(GANNON EXHIBIT NO. 8
was marked for identification.)

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BY MR. SHUB:

Q And I would direct your attention to the second page, Point 5, Roman numeral 5. Dr. Gannon, this exhibit has been Bates stamped Gannon Exhibit 8, it's bearing Bates stamp number 0000017891 through 893. It's a Richmond meeting minute, June 12, 1979, in which you were CCd.

If you look at Point 5-B, it talks about one-to two-milligram product, paren, 85 millimeter candidate, end paren. And under that it talks about, quote, The nicotine level in prototype candidates should be increased. Do you see that?

A Yes.

Q Is this a situation where Philip Morris was targeting nicotine levels in order to -- strike that.

Was this a situation where Philip Morris was targeting nicotine levels?

A Based on what I'm reading here, I'd have to say no. If you're talking about a target, I would think it would say something like the nicotine level should be raised to such-and-such a number of milligrams.

Q Was this a situation where Philip Morris was concerned about the nicotine level in a prototypical candidate?

A Based on what I'm reading, it would appear so.

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Q Do you recall discussions where nicotine levels in prototypical candidates were discussed with respect to whether it should be increased or decreased?

A Do I remember specific discussions? No.

Q Does it surprise you sitting here today that a Richmond meeting minute contained a statement that nicotine levels in prototypical candidates should be increased?

A It surprises me to the extent that that language appears to be a little loose; that perhaps better said it would be that the degree of impact in a low-delivery prototype should be increased.

Q Well, that would equate nicotine levels completely with impact. Is that fair to do?

A No, I don't think --

Q By replacing the language you just suggested, I think one would be left with the impression that impact is determined solely by nicotine levels. Is that fair to say?

A No, it is not fair. You used the word solely, and we've already discussed this at length that alkaloid levels are perhaps one component of increasing impact.

Q Is it your understanding that the statement that nicotine levels in the prototype cigarettes should be increased -- let me withdraw that and rephrase it.

Do you recall outside of this meeting minute

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and this meeting per se, do you recall any other meetings at Philip Morris where nicotine levels in prototypical cigarettes were considered in any way?

A As we've discussed many times this afternoon, yes, nicotine was a part and parcel item in terms of what we measure when we're looking in. I mean, even if the tar spec was 10 milligrams, someone might want to know, well, where is the nicotine level. So I'm sure that nicotine levels were discussed.

Q Why would one want to know where the nicotine levels are?

A It's going to be published on the back when it's sold.

Q Is there any other reason?

A Probably. I can't think of any offhand.

Q Is it because it has to do with impact as well?

A Again we've discussed this at length, that there seems to be a relationship between alkaloid levels and impact.

Q If there is the relationship as you say between alkaloid levels and impact, why would it surprise you that this meeting minute would specifically say that the nicotine level in the prototype candidate should be increased? What's surprising about that?

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A Simply the language, simply saying raise the nicotine level would be put in there in that sense. It sounds like it was a summary of a lot of discussion and whoever wrote this -- who was it --

Q Mr. Daniel.

A Harry Daniel. Yeah. It seems to me like the language is perhaps imprecise, and maybe the conclusion that that's summarizing may be a misrepresentation. I don't know.

Q But you sitting here today don't have any reason to think that other than to specific- -- in other words, is there a basis in fact that you have to believe that Mr. Daniel was reaching an improper conclusion when he wrote this minute?

A I'm already speculating. I don't think I should go any further into speculation. I don't know what was in his mind or what notes he took which led him to summarize that project's conclusion by saying that.

(Mr. Davis departed.)

(GANNON EXHIBIT NO. 9
was marked for identification.)

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MR. OTERO: Can we go off the record for 20 seconds?

(Recess)

BY MR. SHUB:

Q Dr. Gannon, what's been placed before you is Exhibit Number 9. It's Bates stamped 0000017874 through 76. It's a document addressed to you from a Dr. William Dunn dated July 9, 1980. Have you had a chance to look at this document; sir?

A Very quickly.

Q Do you recall receiving a memo from Dr. Dunn dated July 9, 1980?

A No, sir.

Q Do you have an understanding as to why Dr. Dunn would be drafting a memorandum to you?

A Not really.

Q Do you see in Point 1 a conclusion that says, The optimum nicotine-tar ratio at the 10-milligram delivery level appears to be .1?

A I see that.

Q In 1980 were you in the process of developing Merit?

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A No, sir.

Q Merit came after that; is that correct?

A No, that's not correct.

Q Before that?

A Before that.

Q Merit was already commercially sold at this time?

A Yes, sir.

Q Do you recall discussing with Dr. Dunn optimum nicotine-tar ratios?

A No, I do not.

Q Do you recall any -- do you recall ever discussing with anybody at Philip Morris optimum nicotine-tar ratios?

A No, I do not.

Q Would you agree, sir, that this memo appears to conclude that there are certain optimum nicotine-tar ratios for certain tar levels?

A I would conclude that that's what Dr. Dunn concluded.

Q Was that information on optimum nicotine-tar ratios considered by your group ever in developing cigarettes?

A That's the puzzlement. In July of 1980 I had

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nothing to do with developing cigarettes.

Q What were you doing in July of '80?

A I was director of process development. Leo Meyer who was copied was director of product development.

Q Look at Point 5. It says, Should we be considering cigarettes in the ultra-low delivery, paren, 3 to 5 milligram, end paren, range with augmented nicotine, paren, .4, dash, .7 milligrams. Do you see that line?

A Yes, sir.

Q Do you know whether you ever responded to Dr. Dunn's question that's posed to you?

A I do not know.

Q What is your understanding of the term "augmented nicotine"? Have you heard that term before?

A The word augment, of course.

Q Augmented nicotine, in that context?

A Well, obviously I read this memo. It was addressed to me back in 1980. So I guess the answer is yes.

Q Do you have an understanding as to how one would be able to augment nicotine?

A I can give you a couple of speculative swags.

Q Okay. How would nicotine be augmented?

A I think what was done in these -- shear speculation, what was done in these prototypes was that

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additional external nicotine sources were applied to the tobacco. How that would be done in production, if feasible, eludes me. The other thing is to manipulate the blend utilizing more higher-alkaloid tobaccos as we've discussed at length.

Q We know that the latter manner was used at Philip Morris in terms of manipulating the blend; correct?

A Modifying the blend.

Q Modifying the blend; correct?

A Yes.

Q That method was used?

A Yes.

Q With respect to external nicotine sources being applied to tobacco, was that method ever used as far as you know at Philip Morris?

A As far as I know, no.

Q Was it ever discussed as a consideration at Philip Morris?

A It was obviously discussed by Dr. Dunn.

Q You don't recall discussing it though?

A No. I didn't then and I don't now consider that a feasible technique.

Q Why would that not be feasible?

A It would be costly and dangerous.

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Q What would be dangerous about that?

A The possibility of people in the factory mishandling a toxic substance and causing a major industrial accident.

(Mr. Davis returned.)

BY MR. SHUB:

Q As far as you know, is it possible to procure nicotine from sources other than the tobacco itself?

A I can't answer that, speak directly to that. It's possible that some form of nicotine salt is available from some chemical supplier.

Q Did Philip Morris ever purchase nicotine from a chemical supplier?

A I have no idea.

Q Are you aware if Philip Morris ever purchased --

A No.

Q Are you aware of consideration by Philip Morris of purchasing nicotine?

A For commercial use?

Q Yes.

A No.

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Q What about experimental use?

A Well, I have to assume based on what I see in front of me that something must have been done.

Q Did you discuss augmenting nicotine as suggested in Point 5 with Mr. Osdene any time while you were at Philip Morris?

A I don't recall doing that.

Q What about with Mr. Meyer?

A I don't recall doing that.

Q Or Mr. Seligman?

A I don't recall doing that.

Q What about with Mr. Dunn, Dr. Dunn?

A Don't recall doing that.

Q Are you aware of any cigarettes that were tested that had augmented nicotine contained in the cigarette?

A I'm assuming that such substances or such prototypes occurred which led to the results shown in this memo. Assumption.

MR. SHUB: Okay. Let's introduce the next exhibit as Exhibit 10.

(GANNON EXHIBIT NO. 10
was marked for identification.)

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BY MR. SHUB:

Q Let me first -- this is a Gannon Exhibit 10, Bates stamped 1003288950 through 967. The title of this is a Philip Morris Research Center report, Charge Number 1600, titled Low-Delivery Cigarettes and Increased Nicotine-Tar Ratios, A Replication.

And you're on the distribution list, do you see that, Dr. Gannon?

A Yes, sir.

Q Do you recall receiving this report?

A No, sir.

Q Did you typically read reports that came out of PM's research center that you were furnished with?

A As I said earlier, I tried to keep up. There was a lot of paperwork, but I tried to.

Q Let's look at Page 4 of this exhibit. It talks about in the top of the page experimental cigarettes. It says, The experimental cigarettes were targeted to deliver 10 milligrams of tar with .7 -- I'm sorry .07, .1 and .13 nicotine-tar ratios; To obtain the two highest ratios, it was necessary to add supplementary nicotine in the form of nicotine citrate. Are you familiar with nicotine citrate?

A Never met a nicotine citrate I didn't like. In what sense?

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Q Is the term nicotine citrate familiar to you?

A Nicotine citrate is, yeah.

Q Okay.

A It's a salt.

Q Were you aware that Philip Morris was adding nicotine citrate to cigarettes that it was testing?

A I was when I read this.

Q Were you aware when you were at Philip Morris that nicotine citrate was added to experimental cigarettes?

A I read this. I probably read it in 1975 when it was issued, so the answer to that is yes.

MR. OTERO: I think the question is were you aware then, not do you assume based on this document. Can you remember? That's what the questions are. Do you recall?

A Excuse me. I don't specifically recall that.

BY MR. SHUB:

Q Was nicotine citrate ever added to commercial cigarettes?

A I don't know. I doubt it.

Q Why would you doubt it?

A I think we've talked about this already. In my opinion it would have been costly and dangerous. And in my

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view unnecessary.

Q Where did Philip Morris obtain nicotine citrate?

A I have no idea.

Q Were you aware while you were at Philip Morris that Philip Morris used nicotine citrate in any respect?

A If it goes back to the previous inference, do I recall, it's not something that's sitting in my memory bank. Refreshing my memory with this tells me that obviously there was some experimental cigarettes made with extraneous nicotine, probably from nicotine citrate as it says here.

Q And how is -- strike that.

What is nicotine citrate?

A It's an organic chemical.

Q Was that chemical produced internally at Philip Morris?

A I can't speak to that. I would doubt it.

Q For the reasons that you just testified earlier with respect to cost and possible danger?

A No.

Q Why?

A Because I'm assuming these quantities were done -- these cigarettes were produced in small quantity with very small quantities of extraneous nicotine citrate,

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in the flavor department in various manufacturing departments throughout Philip Morris.

Q And who would that be?

A I have no idea.

Q If we look on Page 8 of this document under the heading further research, it says, In order to clarify the meaning of the results of this study, it would be beneficial to discover whether nicotine has the same effect if added in forms other than nicotine citrate.

A Excuse me. Where are you reading?

Q I'm sorry. At the bottom, further research.

A Okay.

Q Do you see that sentence?

A Uh-huh. Yes.

Q How would nicotine be added in forms other than in nicotine citrate?

A The only other way that I know of, to do it according to the confines of this type of experimentation, would be to use another salt of nicotine.

Q Are there other --

A Nicotine sulfate, nicotine tartrate.

Q Were they ever -- were any other --

A I don't know if they even exist. I'm pretty sure nicotine sulfate exists. And the answer to your

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question is no, I don't know.

Q Did you know a Dr. DeNoble while you were at Philip Morris?

A I'm not sure. I've seen his name and picture in the paper recently. I didn't know him as he is now. But -- I probably met him.

Q Was Dr. Dunn known at the company as the nicotine kid?

A I've heard that moniker used. I don't remember ever hearing it in my presence. I mean, while I was there.

Q While you were at Philip Morris, were you aware that Dr. Dunn held the view that smokers smoked for nicotine?

A I guess I'd have to say yes, I believe that he thought that.

Q Did you ever hear him talk about that?

A I can't recall.

Q Were you ever in meetings where the issue of whether smokers smoked for nicotine was raised?

A I don't specifically recall meetings like that.

Q Did you ever read any studies from Philip Morris that would indicate that there was support for that hypothesis articulated by Dr. Dunn that smokers smoked for nicotine?

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A I can't specify any documents that I've seen along those lines.

Q While you were at Philip Morris, was it your belief that smokers smoked for nicotine?

A My personal belief?

Q Yes.

A Again we have to get back to some of the definitions we've talked about before. My personal belief involved a smoker desiring the impact produced by the alkaloids along with a whole host of other tactile sensations and other things going on in -- within the mouth and the lungs.

Q Were you aware that Philip Morris was studying the question of whether nicotine was a reinforcing agent?

A I'm not sure what that means.

Q You don't understand the terminology reinforcing agent?

A That's correct.

Q Do you know whether Philip Morris was studying the question of whether nicotine caused addiction in humans?

A Would you repeat that, please.

MR. SHUB: Could you repeat that, please?

(The record was read.)

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A No. No, I don't know of that.

BY MR. SHUB:

Q Were you aware that Dr. DeNoble had a laboratory facility at Philip Morris which studied rats, the behavior of rats?

A I would have trouble answering that directly because I've read about it more recently. So I don't know whether I knew of it at the time.

Q In 1984 do you recall Dr. DeNoble's lab being closed?

A No, I don't. I was no longer in R&D.

Q Were you ever at a presentation made by Dr. DeNoble?

A I don't know. I don't think so.

Q Dr. Gannon, are you aware of this -- the destruction of any research results at Philip Morris by any personnel?

A No, sir.

Q Is it your opinion that to destroy research results would not be in accordance with the document destruction policy at Philip Morris? It would be a violation of company policy?

A I know of no such policy.

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Q Did you ever hear of anyone destroying research results?

A No, sir.

MR. SHUB: Let's mark the next exhibit.

(GANNON EXHIBIT NO. 11 was marked for identification.)

BY MR. SHUB:

Q I just want you to focus on the first paragraph of this exhibit. Gannon 11 is Bates stamped 1000768349 --

MR. OTERO: That's not what I have.

MR. SHUB: Strike that.

BY MR. SHUB:

Q Okay. Gannon 11 is Bates stamped 1003391219. And it's a memo from K. S. Burns to Dr. Seligman in which you're CCd.

Do you recall receiving this memo?

A No, sir.

Q In the third paragraph it says, We are also planning to develop a process for recovering the alkaloid, preferably in a marketable form, to alleviate any effluent problems. Do you recall any development of such a process?

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A A process for recovering alkaloid?

Q Right.

A I don't really recall it. I remember this project. We talked about it earlier.

Q Which project was this?

A The removal of alkaloids by steaming the tobacco.

Q Is that in the RL process?

A No.

Q In what process is that done?

A We talked about it in the context of was I surprised that the commercial product where the nicotine had been removed was a flop, and remember I said no because we had done this. This refers to that particular project. And as far as I know, no process was developed for recovering the alkaloid because this never went any farther than this. It's strictly an engineering experimental project.

Q Okay. Were you involved in the supercritical extraction method for removal of alkaloids?

A No, sir, that was after my time.

Q Okay.

A My time at Philip Morris.

Praise the Lord.

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(GANNON EXHIBIT NO. 12
was marked for identification.)

BY MR. SHUB:

Q And I would direct your attention, sir, to the last paragraph on Page 3. This is a document Bates stamped 2058443872 to --

MR. OTERO: That's not what I have.

MR. SHUB: Well, you do, but there are two different Bates stamps.

MR. OTERO: oh, okay. Gotcha. Never mind.

MR. SHUB: -- 2058443883. The title of this document is Manipulation of Nicotine Delivery by Addition of Acids to Filler.

BY MR. SHUB:

Q Do you recall this study, Dr. Gannon?

A No, sir.

Q It says on Page 3, To confirm this observation -- and that's not the important part for our purposes what this observation was -- control cigarettes were injected with various levels of formic acid and submitted to analytical; And once again nicotine delivery increased with addition of formic acid. Do you recall

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Philip Morris injecting control cigarettes with formic acid thereby increasing nicotine delivery?

A Do I recall it? No, sir.

Q You do not?

A No.

Q Do you know whether cigarettes injected with formic acid were ever sold commercially?

A I can't speak to that directly. I don't think so. Not to my knowledge. Again these are experimental studies.

Q Let's look on Page 4 at the bottom of the page. It says, These subjective results seem to be consistent with the theory that smoke impact, inhalibility, is not so much related to total nicotine as to the level of unprotonated nicotine. Do you recall any kind of discussion of the sort at Philip Morris with respect to the nicotine delivery?

A No, sir.

(GANNON EXHIBIT NO. 13
was marked for identification.)

BY MR. SHUB:

Q Okay. The next exhibit is Bates stamped Gannon 13, Bates stamped 1003391167 to 1168 in which you were CCd.

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It's a September 21, 1977 memo from Mr. Gauvin to Mr. Meyer. The first sentence says, Reviewing our recent work to increase nicotine in smoke with our five- to six-milligram cigarettes, we have done the following. Do you recall instances in which your group or individuals working under you were working to increase nicotine in smoke?

A I don't remember directly, no.

Q What about indirectly?

A Well, indirectly by seeing this I have to assume that it was done.

Q That it was injected with 11-percent nicotine citrate, excuse me, solution?

MR. OTERO: Was the question does he remember it?

MR. SHUB: Right.

MR. OTERO: Do you remember?

BY MR. SHUB:

Q Do you remember that happening?

A No, I don't remember that happening.

Q Does it surprise you sitting here today that work was done to increase nicotine in smoke?

A Not really.

Q Well, that's because nicotine has an effect on

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impact and therefore subjectibility of the cigarette?

MR. OTERO: Object to the form.

BY MR. SHUB:

Q Why doesn't it surprise you?

A Because as I mentioned enumerable times, this was an R&D operation. We wanted to know as much as possible, and the quest for determining the subjective response to varying levels of nicotine is not surprising to me.

Q So this was sort of -- are you saying this was an exercise, in terms of injecting nicotine citrate, was an exercise that was done for research purposes only?

A Yes.

Q And there was no intention of commercially marketing a product that had nicotine citrate injected in it?

A Not to my knowledge. The decisions as we've again spoken to several times as to what is commercially sold rests far outside the domain of R&D.

Q Why would -- why did Philip Morris work to increase nicotine in smoke?

MR. OTERO: I'm going to object to the form of the question.

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You can answer.

A Again developing knowledge about what would happen to suggest -- subjective response from a smoker's point of view to varying levels of nicotine, varying the ratio of nicotine to tar was of interest.

BY MR. SHUB:

Q Because nicotine is important component of smoke?

MR. OTERO: Objection to the form.

Q Of tobacco?

MR. OTERO: Same objection.

A Again we've discussed this. In terms of isolating nicotine vis-a-vis alkaloids, vis-a-vis all the other things which impart subjective response to the smoker.

BY MR. SHUB:

Q Did you authorize, Dr. Gannon, work that would result in attempts to increase nicotine in smoke?

MR. OTERO: Objection to the form of the question. I think it's vague and misleading as phrased.

You can answer it if you can understand it.

A What do you mean by authorized?

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BY MR. SHUB:

Q In other words, who told Mr. Gauvin or -- to do this work?

A I don't really know.

Q Did you?

A No. I doubt it.

Q Did you know this work was being done at this time in 1977?

A I knew it as I saw the reports and heard -- or the oral presentations.

Q Do you know whose idea it was to initiate work to increase nicotine in smoke?

A I've already answered that a minute ago. No.

Q But it wasn't your idea; is that what you're saying?

A Don't think it was.

Q In the RL process is -- are nitrates removed in the RL process?

A I believe they are.

Q Why were they removed?

A There was some reporting outside Philip Morris that oxides of nitrogen had a bad reputation. Oxides of nitrogen are generated from a nitrate anion. Potassium nitrate is present in Burley tobacco and most particularly

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in Burley stems. We felt it was to the better advantage of the company to remove them.

Q Is that because there were some health concerns about potassium nitrate?

A No concerns based on potassium nitrate per se. But during the pyrolysis of tobacco, the nitrates would generate oxides of nitrogen.

Q And were they considered to be carcinogens?

MR. OTERO: By whom?

BY MR. SHUB:

Q By Philip Morris.

A I don't think oxides of nitrogen are considered to be carcinogens by anybody.

Q When the nitrates were removed in the RL process, were they later put back in?

A No, sir.

Q Was nicotine removed in any manner in the RL process?

A Removed from what?

Q Well, was it separated from fibers in the RL process?

A All water soluble constituents of the tobacco were separated and reapplied.

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Q Was nicotine considered to be one of those components?

A Yes, sir.

Q And it was reapplied?

A Yes, sir. The solution after concentration was reapplied.

Q Why was the solution containing nicotine -- well, strike that.

Was it conceivable to have taken out the nicotine from the solution --

MR. OTERO: Objection.

BY MR. SHUB:

Q -- And still applied the solubles to the fibers to make the base web?

MR. OTERO: Objection.

Q Was that technically possible?

MR. OTERO: I'll object to both questions. The first one principally because the word conceivable is vague. And the second one, it's unclear to me what "it" means, but --

A Now I get to reconstruct the question.

(Mr. Gaddes departed.)

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BY MR. SHUB:

Q Can nicotine have been removed from the soluble portion and not utilized in making the RL tobacco?

A I would answer that by saying it's conceivable, but I don't know how you would do it.

Q You couldn't separate out and eliminate and extract the nicotine --

A As I said offhand --

Q -- from the solubles?

A Like I said, I don't know how you would do that.

MR. SHUB: I have no further questions, Dr. Gannon.

Do you have any?

MR. OTERO: Let's go off the record for one minute. I want to consult with Mr. Davis for a minute.

(Recess)

MR. OTERO: Okay. Philip Morris has no questions. We would like to place on the record two statements though. First, we provisionally designate the depositions confidential under the terms of the protective order. You know, we'll read it and designate the portions

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as appropriate.

And secondly, Dr. Gannon will read and sign.

MR. SHUB: Great. Thank you for your time.

And further this deponent saith not.

(This deposition concluded at 4:15 p.m.)

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_____
Walter F. Gannon

Commonwealth of Virginia, to wit:

Subscribed to before me

this_____day of_____, 1997.

_____
Notary Public

My commission expires: / / .

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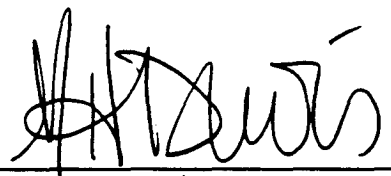
COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

I, Michaela Herman Davis, RPR, commissioned as Michaela H. Herman, Notary Public in and for the Commonwealth of Virginia at large, and whose commission expires July 31, 2000, do certify that the aforementioned appeared before me, was sworn by me, and was thereupon examined by counsel; and that the foregoing is a true, correct, and full transcript of the testimony adduced.

I further certify that I am neither related to nor associated with any counsel or party to this proceeding, nor otherwise interested in the event thereof.

Given under my hand and notarial seal at Richmond, Virginia, this 12th day of August, 1997.



Michaela Herman Davis, RPR - Notary Public
Commonwealth of Virginia at Large

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CHANGES REQUESTED TO THE DEPOSITION OF
WALTER F. GANNON TAKEN AUGUST 8, 1997

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